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OF

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J. N. Marsh

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ERRATA.—Page 52, 4th line from bottom, for "fam" read *farm*. Page 130, 10th line from top, for "confirm," read *conform*.

THE

UNCONSTITUTIONALITY OF SLAVERY.

CHAPTER I.

WHAT IS LAW?

BEFORE examining the language of the Constitution, in regard to Slavery, let us obtain a view of the principles, by virtue of which *law* arises out of those constitutions and compacts, by which people agree to establish government.

To do this it is necessary to define the term *law*. Popular opinions are very loose and indefinite, both as to the true definition of law, and also as to the principle, by virtue of which law results from the compacts or contracts of mankind with each other.

What then is LAW? That law, I mean, which, and which only, judicial tribunals are morally bound, under all circumstances, to declare and sustain?

In answering this question, I shall attempt to show that law is an intelligible principle of right, necessarily resulting from the nature of man; and not an arbitrary rule, that can be established by mere will, numbers or power.

To determine whether this proposition be correct, we must look at the *general* signification of the term *law*.

The true and general meaning of it, is that *natural*, permanent, unalterable principle, which governs any particular thing or class of things. The principle is strictly a *natural* one; and the term applies to every *natural* principle, whether

mental, moral or physical. Thus we speak of the laws of mind; meaning thereby those *natural*, universal and necessary principles, according to which mind acts, or by which it is governed. We speak too of the moral law; which is merely an universal principle of moral obligation, that arises out of the nature of men, and their relations to each other, and to other things—and is consequently as unalterable as the nature of men. And it is solely because it is unalterable in its nature, and universal in its application, that it is denominated law. If it were changeable, partial or arbitrary, it would be no law. Thus we speak of physical laws; of the laws, for instance, that govern the solar system; of the laws of motion, the laws of gravitation, the laws of light, &c., &c.—Also the laws that govern the vegetable and animal kingdoms, in all their various departments: among which laws may be named, for example, the one that like produces like. Unless the operation of this principle were uniform, universal and necessary, it would be no law.

Law, then, applied to any object or thing whatever, signifies a *natural*, unalterable, universal principle, governing such object or thing. Any rule, not existing in the nature of things, or that is not permanent, universal and inflexible in its application, is no law, according to any correct definition of the term law.

What, then, is that *natural*, universal, impartial and inflexible principle, which, under all circumstances, *necessarily* fixes, determines, defines and governs the civil rights of men? Those rights of person, property, &c., which one human being has, as against other human beings?

I shall define it to be simply *the rule, principle, obligation or requirement of natural justice.*

This rule, principle, obligation or requirement of natural justice, has its origin in the natural rights of individuals, results necessarily from them, keeps them ever in view as its end and purpose, secures their enjoyment, and forbids their violation. It also secures all those acquisitions of property,

privilege and claim, which men have a *natural* right to make by labor and contract.

Such is the true meaning of the term law, as applied to the civil rights of men. And I doubt if any other definition of law can be given, that will prove correct in every, or necessarily in any possible case. The very idea of law originates in men's natural rights. There is no other standard, than natural rights, by which civil law can be measured. Law has always been the name of that rule or principle of justice, which protects those rights. Thus we speak of *natural law.* Natural law, in fact, constitutes the great body of the law that is *professedly* administered by judicial tribunals: and it always necessarily must be—for it is impossible to anticipate a thousandth part of the cases that arise, so as to enact a special law for them. Wherever the cases have not been thus anticipated, the natural law prevails. We thus politically and judicially *recognize* the principle of law as originating in the nature and rights of men. By recognizing it as originating in the nature of men, we recognize it as a principle, that is necessarily as immutable, and as indestructible as the nature of man. We also, in the same way, recognize the impartiality and universality of its application.

If, then, law be a natural principle—one necessarily resulting from the very nature of man, and capable of being destroyed or changed only by destroying or changing the nature of man—it necessarily follows that it must be of higher and more inflexible obligation than any other rule of conduct, which the arbitrary will of any man, or combination of men, may attempt to establish. Certainly no rule can be of such high, universal and inflexible obligation, as that, which, if observed, secures the rights, the safety and liberty of all.

Natural law, then, is the paramount law. And, being the paramount law, it is necessarily the only law: for, being applicable to every possible case that can arise touching the rights of men, any other principle or rule, that should arbitrarily be applied to those rights, would necessarily conflict

with it. And, as a merely arbitrary, partial and temporary rule must, of necessity, be of less obligation than a natural, permanent, equal and universal one, the arbitrary one becomes, in reality, of no obligation at all, when the two come in collision. Consequently there is, and can be, correctly speaking, *no law but natural law.* There is no other principle or rule, applicable to the rights of men, that is obligatory in comparison with this, in any case whatever. And this natural law is no other than that rule of natural justice, which results either directly from men's natural rights, or from such acquisitions as they have a *natural* right to make, or from such contracts as they have a *natural* right to enter into.

Natural law recognizes the validity of all contracts which men have a *natural* right to make, and which justice requires to be fulfilled: such, for example, as contracts that render equivalent for equivalent, and are at the same time consistent with morality, the natural rights of men, and those rights of property, privilege, &c., which men have a natural right to acquire by labor and contract.

Natural law, therefore, inasmuch as it recognizes the natural right of men to enter into obligatory contracts, permits the formation of government, founded on contract, as all our governments profess to be. But in order that the contract of government may be valid and lawful, it must purport to authorize nothing inconsistent with natural justice, and men's natural rights. It cannot lawfully authorize government to destroy or take from men their natural rights: for natural rights are inalienable, and can no more be surrendered to government—which is but an association of individuals—than to a single individual. They are a necessary attribute of man's nature; and he can no more part with them—to government or any body else—than with his nature itself. But the contract of government may lawfully authorize the adoption of means—not inconsistent with natural justice—for the better protection of men's natural rights. And this is the legitimate and true object of government. And rules and stat-

utes, not inconsistent with natural justice and men's natural rights, if enacted by such government, are binding, on the ground of contract, upon those who are parties to the contract, which creates the government, and authorizes it to pass rules and statutes to carry out its objects.*

But natural law tries the contract of government, and declares it lawful or unlawful, obligatory or invalid, by the same rules by which it tries all other contracts between man and man. A contract for the establishment of government, being nothing but a voluntary contract between individuals for their mutual benefit, differs, in nothing that is essential to its validity, from any other contract between man and man, or between nation and nation. If two individuals enter into a contract to commit trespass, theft, robbery or murder upon a third, the contract is unlawful and void, simply because it is a contract to violate natural justice, or men's natural rights. If two nations enter into a treaty, that they will unite in plundering, enslaving or destroying a third, the treaty is unlawful, void, and of no obligation, simply because it is contrary to justice and men's natural rights. On the same principle, if the majority, however large, of the people of a country, enter into a contract of government, called a constitution, by which they agree to aid, abet or accomplish any kind of injustice, or to destroy or invade the natural rights of any person or persons whatsoever, whether such persons be parties to the compact or not, this contract of government is unlawful

*It is obvious that legislation can have, in this country, no higher or other authority, than that which results from natural law, and the obligation of contracts: for our constitutions are but contracts, and the legislation they authorize can of course have no other or higher authority than the constitutions themselves. The stream cannot rise higher than the fountain. The idea, therefore, of any *inherent* authority or sovereignty in our governments, as governments, or of any inherent right in the majority to restrain individuals, by arbitrary enactments, from the exercise of any of their natural rights, is as sheer an imposture as the idea of the divine right of kings to reign, or any other of the doctrines on which arbitrary governments have been founded. And the idea of any necessary or inherent authority in legislation, as such, is, of course, equally an imposture. If legislation be consistent with natural justice, and the natural or intrinsic obligation of the contract of government, it is obligatory: if not, not.

and void—and for the same reason that a treaty between two nations for a similar purpose, or a contract of the same nature between two individuals, is unlawful and void. Such a contract of government has no moral sanction. It confers no rightful authority upon those appointed to administer it. It confers no legal or moral rights, and imposes no legal or moral obligation upon the people who are parties to it. The only duties, which any one can owe to it, or to the government established under color of its authority, are disobedience, resistance, destruction.

Judicial tribunals, sitting under the authority of this unlawful contract or constitution, are bound, equally with other men, to declare it, and all unjust enactments passed by the government in pursuance of it, unlawful and void. These judicial tribunals cannot, by accepting office under a government, rid themselves of that paramount obligation, that all men are under, to declare, if they declare any thing, that justice is law; that government can have no lawful powers, except those with which it has been invested by lawful contract; and that an unlawful contract for the establishment of government, is as unlawful and void as any other contract to do injustice.

No oaths, which judicial or other officers may take, to carry out and support an unlawful contract or constitution of government, are of any moral obligation. It is immoral to take such oaths, and it is criminal to fulfil them. They are, both in morals and law, like the oaths which individual pirates, thieves and bandits give to their confederates, as an assurance of their fidelity to the purposes for which they are associated. No man has any moral right to assume such oaths; they impose no obligation upon those who do assume them; they afford no moral justification for official acts, in themselves unjust, done in pursuance of them.

If these doctrines are correct, then those contracts of government, state and national, which we call constitutions, are void, and unlawful, so far as they purport to authorize, (if

any of them do authorize,) any thing in violation of natural justice, or the natural rights of any man or class of men whatsoever. And all judicial tribunals are bound, by the highest obligations that can rest upon them, to declare that these contracts, in all such particulars, (if any such there be,) are void, and not law. And all agents, legislative, executive, judicial and popular, who voluntarily lend their aid to the execution of any of the unlawful purposes of the government, are as much personally guilty, according to all the moral and legal principles, by which crime, in its essential character, is measured, as though they performed the same acts independently, and of their own volition.

Such is the true character and definition of law. Yet, instead of being allowed to signify, as it in reality does, that natural, universal and inflexible principle, which has its origin in the nature of man, keeps pace every where with the rights of man, as their shield and protector, binds alike governments and men, weighs by the same standard the acts of communities and individuals, and is paramount in its obligation to any other requirement which can be imposed upon men—instead, I say, of the term law being allowed to signify, as it really does, this immutable and overruling principle of natural justice it has come to be applied to mere arbitrary rules of conduct, prescribed by individuals, or combinations of individuals, self-styled governments, who have no other title to the prerogative of establishing such rules, than is given them by the possession or command of sufficient physical power to coerce submission to them.

The injustice of these rules, however palpable and atrocious it may be, has not deterred their authors from dignifying them with the name of *law*. And, what is much more to be deplored, such has been the superstition of the people, and such their blind veneration for physical power, that this injustice has not opened their eyes to the distinction between law and force, between the sacred requirements of natural justice, and the criminal exactions of unrestrained sefishness and

power. They have thus not only suffered the name of law to be stolen, and applied to crime as a cloak to conceal its true nature, but they have rendered homage and obedience to crime, under the name of law, until the very name of law, instead of signifying, in their minds, an immutable principle of right, has come to signify little more than an arbitrary command of power, without reference to its justice or its injustice, its innocence or its criminality. And now, commands the most criminal, if christened with the name of law, obtain nearly as ready an obedience, oftentimes a more ready obedience, than law and justice itself. This superstition, on the part of the people, which has thus allowed force and crime to usurp the name and occupy the throne of justice and law, is hardly paralleled in its grossness, even by that superstition, which, in darker ages of the world, has allowed falsehood, absurdity and cruelty to usurp the name and the throne of religion.

But I am aware that other definitions of law, widely different from that I have given, have been attempted—definitions too, which practically obtain, to a great extent, in our judicial tribunals, and in all the departments of government. But these other definitions are nevertheless, all, in themselves, uncertain, indefinite, mutable; and therefore incapable of being standards, by a reference to which the question of law, or no law, can be determined. Law, as defined by them, is capricious, arbitrary, unstable; is based upon no fixed principle; results from no established fact; is susceptible of only a limited, partial and arbitrary application; possesses no intrinsic authority; does not, in itself, recognize any moral principle; does not necessarily confer upon, or even acknowledge in individuals, any moral or civil rights; or impose upon them any moral obligation.

For example. One of these definitions—one that probably embraces the essence of all the rest—is this:

That "law is a rule of civil conduct, prescribed by the supreme power of a state, commanding what its subjects are

to do, and prohibiting what they are to forbear." *Noah Webster.*

In this definition, hardly any thing, that is essential to the idea of law, is made certain. Let us see. It says that,

"Law is a rule of civil conduct, prescribed by the *supreme power* of a state."

What is "the supreme power," that is here spoken of, as the fountain of law? Is it the supreme physical power? Or the largest concentration of physical power, whether it exist in one man, or in a combination of men? Such is undoubtedly its meaning. And if such be its meaning, then the law is uncertain; for it is oftentimes uncertain where, or in what man, or body of men, in a state, the greatest amount of physical power is concentrated. Whenever a state should be divided into factions, no one having the supremacy of all the rest, law would not merely be inefficient, but the very principle of law itself would be actually extinguished. And men would have no "rule of civil conduct." This result alone is sufficient to condemn this definition.

Again. If physical power be the fountain of law, then law and force are synonymous terms. Or, perhaps, rather, law would be the result of a combination of will and force; of will, united with a physical power sufficient to compel obedience to it, but not necessarily having any moral character whatever.

Are we prepared to admit the principle, that there is no real distinction between law and force? If not, we must reject this definition.

It is true that law may, in many cases, depend upon force as the means of its practical efficiency. But are law and force therefore identical in their essence?

According to this definition, too, a command to do injustice, is as much law, as a command to do justice. All that is necessary, according to this definition, to make the command a law, is that it issue from a will that is supported by physical force sufficient to coerce obedience.

Again. If mere will and power are sufficient, of themselves, to establish law—legitimate law—such law as judicial tribunals are morally bound, or even have a moral right to enforce—then it follows that wherever will and power are united, and continue united until they are successful in the accomplishment of any particular object, to which they are directed, they constitute the only legitimate law of that case, and judicial tribunals can take cognizance of no other.

And it makes no difference, on this principle, whether this combination of will and power be found in a single individual, or in a community of an hundred millions of individuals.—The numbers concerned do not alter the rule—otherwise law would be the result of numbers, instead of "supreme power." It is therefore sufficient to comply with this definition, that the power be equal to the accomplishment of the object. And the will and power of one man are therefore as competent to make the law relative to any acts which he is able to execute, as the will and power of millions of men are to make the law relative to any acts which they are able to accomplish.

On this principle, then—that mere will and power are competent to establish the law that is to govern an act, without reference to the justice or injustice of the act itself, the will and power of any single individual to commit theft, would be sufficient to make theft lawful, as lawful as is any other act of injustice, which the will and power of communities, or large bodies of men, may be united to accomplish. And judicial tribunals are as much bound to recognize, as lawful, any act of injustice or crime, which the will and power of a single individual may have succeeded in accomplishing, as they are to recognize as lawful any act of injustice, which large and organized bodies of men, self-styled governments, may accomplish.

But, perhaps it will be said that the soundness of this definition depends upon the use of the word "state"—and that it therefore makes a distinction between "the supreme power of *a state*," over a particular act, and the power of an individual over the same act.

But this addition of the word "state," in reality leaves the definition just where it would have been without it. For what is "a state?" It is just what, and only what, the will and power of individuals may arbitrarily establish.

There is nothing *fixed* in the nature, character or boundaries of "a state." Will and power may alter them at pleasure. The will and power of Nicholas, and that will and power, which he has concentrated around, or rather within himself, establishes all Russia, both in Europe and Asia, as "a state." By the same rule, the will and power of the owner of an acre of ground, may establish that acre as a state, and make his will and power, for the time being, supreme and lawful within it.

The will and power, also, that established "a state" yesterday, may be overcome to-day by an adverse will and power, that shall abolish that state, and incorporate it into another, over which this latter will and power shall to-day be "supreme." And this latter will and power may also to-morrow be overcome by still another will and power mightier than they.

"A state," then, is nothing fixed, permanent or certain in its nature. It is simply the boundaries, within which any single combination or concentration of will and power, are efficient, or irresistible, *for the time being.*

This is the only true definition that can be given of "a state." It is merely an arbitrary name given to the territorial limits of power. And if such be its true character, then it would follow, that the boundaries, though but two feet square, within which the will and power of a single individual are, *for the time being*, supreme, or irresistible, are, for all *legal* purposes, "a state"—and his will and power constitute, for the time being, the law within those limits; and his acts are, therefore, for the time being, as necessarily lawful, without respect to their intrinsic justice or injustice, as are the acts of larger bodies of men, within those limits where their will and power are supreme and irresistible.

If, then, law really be, what this definition would make it,

merely "a rule of civil conduct prescribed by the supreme power of a state"—it would follow, as a necessary consequence, that law is synonymous merely with will and force, wherever they are combined and in successful operation, for the present moment.

Under this definition, law offers no permanent guaranty for the safety, liberty, rights or happiness of any one. It licenses all possible crime, violence and wrong, both by governments and individuals. The definition was obviously invented by, and is suited merely to gloss over the purposes of, arbitrary power. We are therefore compelled to reject it; and to seek another, that shall make law less capricious, less uncertain, less arbitrary, more just, more safe to the rights of all, more permanent. And if we seek another, where shall we find it, unless we adopt the one first given, viz. *that law is the rule, principle, obligation or requirement of natural justice?*

Adopt this definition, and law becomes simple, intelligible, scientific; always consistent with itself; always harmonizing with morals, reason and truth. Reject this definition, and law is no longer a science: but a chaos of crude, conflicting and arbitrary edicts, unknown perchance to either morals, justice, reason or truth, and fleeting and capricious as the impulses of will, interest and power.

If, then, law really be nothing other than the rule, principle, obligation or requirement of natural justice, it follows that government can have no powers except such as individuals may *rightfully* delegate to it: that no law, inconsistent with men's natural rights, can arise out of any contract or compact of government: *that constitutional law, under any form of government, consists only of those principles of the written constitution, that are consistent with natural law, and man's natural rights;* and that any other principles, that may be expressed by the letter of any constitution, are void and not law, and all judicial tribunals are bound to declare them so.

Though this doctrine may make sad havoc with constitu-

tions and statute books, it is nevertheless law. It fixes and determines the real rights of all men; and its demands are as imperious as any that can exist under the name of law.

It is possible, perhaps, that this doctrine would spare enough of our existing constitutions, to save our governments from the necessity of a new organization. But whatever else it might spare, one thing it would not spare. It would spare no vestige of that system of human slavery, which now claims to exist by authority of law.*

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*The mass of men are so much accustomed to regard law as an arbitrary command of those who administer political power, that the idea of its being a *natural*, fixed, and immutable principle, may perhaps want some other support than that of the reasoning already given, to commend it to their adoption. I therefore give them the following corroborations from sources of the highest authority.

"Jurisprudence is the science of what is just and unjust."—*Justinian.*

"The primary and principal objects of the law are rights and wrongs."—*Blackstone.*

"Justice is the constant and perpetual disposition to render to every man his due."—*Justinian.*

"The precepts of the law are to live honestly; to hurt no one; to give to every one his due."—*Justinian & Blackstone.*

"LAW. The rule and bond of men's actions; or it is a rule for the well governing of civil society, to give to every man that which doth belong to him."—*Jacob's Law Dictionary.*

"Laws are arbitrary or positive, and natural; the last of which are essentially just and good, and bind every where, and in all places where they are observed. * * * * Those which are natural laws, are from God; but those which are arbitrary, are properly human and positive institutions."—*Selden on Fortescue, C.* 17, *also Jacob's Law Dictionary.*

"The law of nature is that which God, at man's creation, infused into him, for his preservation and direction; and this is an eternal law, and may not be changed."—2 *Shep. Abr.* 356, *also Jac. Law Dict.*

"All laws derive their force from the law of nature; and those which do not, are accounted as no laws."—*Fortescue. Jac. Law Dict.*

"No law will make a construction to do wrong; and there are some things which the law favors, and some it dislikes; it favoreth those things that come from the order of nature."—1 *Inst.* 183, 197.—*Jac. Law Dict.*

"Of law no less can be acknowledged, than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage; the least as feeling her care, and the greatest as not exempted from her power."—*Hooker.*

"This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all

CHAPTER II.

WRITTEN CONSTITUTIONS.

TAKING it for granted that it has now been shown that no rule of civil conduct, that is inconsistent with the natural rights of men, can be rightfully established by government, or consequently be made obligatory as law, either upon the peo-

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countries, and at all times : no human laws are of any validity, if contrary to this; and such of them as are valid, derive all their force, and all their authority, mediately or immediately, from this original."—*Blackstone, Vol.* 1, *p.* 41.

Mr. Christian, one of Blackstone's editors, in a note to the above passage, says :

"Lord Chief Justice Hobart has also advanced, that even an act of Parliament made against natural justice, as to make a man judge in his own cause, is void in itself, for *jura naturæ sunt immutabilia*, and they are *leges legum*"—(the laws of nature are immutable—they are the laws of laws.)—*Hob.* 87.

Mr. Christian then adds :

"With deference to these high authorities, (Blackstone and Hobart,) I should conceive that in no case whatever can a judge oppose his own opinion and authority to the clear will and declaration of the legislature. His province is to interpret and obey the mandates of the supreme power of the state. And if an act of Parliament, if we could suppose such a case, should, like the edict of Herod, command all the children under a certain age to be slain, the judge ought to resign his office rather than be auxiliary to its execution; but it could only be declared void by the same legislative power by which it was ordained. If the judicial power were competent to decide that an act of parliament was void because it was contrary to natural justice, upon an appeal to the House of Lords this inconsistency would be the consequence, that as judges they must declare void, what as legislators they had enacted should be valid.

"The learned judge himself (Blackstone) declares in p. 91, if the Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution, that is vested with authority to control it."

It will be seen from this note of Mr. Christian, that he concurs in the opinion that an enactment contrary to natural justice is *intrinsically* void, and not law; and that the principal, if not the only difficulty, which he sees in carrying out that doctrine, is one that is peculiar to the British constitution, and does not exist in the United States. That difficulty is, the "inconsistency" there would be, if the House of Lords, (which is the highest law court in England, and at the same time one branch

ple, or upon judicial tribunals—let us now proceed to test the legality of slavery by those written constitutions of government, which judicial tribunals actually recognize as authoritative.

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of the legislature,) were to declare, in their capacity as judges, that an act was void, which, as legislators, they had declared should be valid. And this is probably the reason why Blackstone admitted that he knew of no power in the ordinary forms of the (British) constitution, that was vested with authority to control an act of parliament that was unreasonable, (against natural justice.) But in the United States, where the judicial and legislative powers are vested in different bodies, and where they are so vested for the very purpose of having the former act as a check upon the latter, no such inconsistency would occur.

The constitutions that have been established in the United States, and the discussions had on the formation of them, all attest the importance which our ancestors attached to a separation of the judicial, from the executive and legislative departments of the government. And yet the benefits, which they had promised to liberty and justice from this separation, have in slight only, if any degree, been realized.—Although the legislation of the country generally has exhibited little less than an entire recklessness both of natural justice and constitutional authority, the records of the judiciary nevertheless furnish hardly an instance where an act of a legislature has, for either of these reasons, been declared void by its co-ordinate judicial department. There have been cases, few and far between, in which the United State's courts have declared acts of state legislatures unconstitutional. But the history of the co-ordinate departments of the same governments has been, that the judicial sanction followed the legislative act with nearly the same unerring certainty, that the shadow follows the substance. Judicial decisions have consequently had the same effects in restraining the actions of legislatures, that shadows have in restraining the motions of bodies.

Why this uniform concurrence of the judiciary with the legislature? It is because the separation between them is nominal, not real. The judiciary receive their offices and salaries at the hands of the executive and the legislature, and are amenable only to the legislature for their official character. They are made entirely independent of the people at large, (whose highest interests are liberty and justice,) and entirely dependent upon those who have too many interests inconsistent with liberty and justice. Could a real and entire separation of the judiciary from the other departments take place, we might then hope that their decisions would, in some measure, restrain the usurpations of the legislature, and promote progress in the science of law and of government.

Whether any of our present judges would, (as Mr. Christian suggests they ought,) "resign their offices" rather than be auxiliary to the execution of an act of legislation, that, like the edict of Herod, should require all the children under a certain age to be slain, we cannot certainly know. But this we do know—that our judges have hitherto manifested no intention of resigning their offices to avoid declaring it to be law, that "children of two years old and under," may be wrested forever from that parental protection which is their birth-right, and subjected for life to outrages which all civilized men must regard as worse than death.

To proceed with our authorities:—

"Those human laws that annex a punishment to murder, do not at all increase its

In making this examination, however, I shall not insist upon the principle of the preceding chapter, that there can be no law contrary to natural right; but shall admit, for the sake of the argument, that there may be such laws. I shall only

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moral guilt or superadd any fresh obligation in the forum of conscience to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine."—*Blackstone, Vol.* 1, *p.* 42, 43.

"The law of nations depends entirely upon the rules of *natural law*, or upon mutual compacts, treaties, leagues and agreements between these several communities; in the construction also of which compacts, we have no other rule to resort to, but the law of nature: (that) being the only one to which all the communities are equally subject."—*Blackstone, Vol.* 1, *p.* 43.

"Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture."—*Blackstone, Vol.* 1, *p.* 54.

"By the absolute rights of individuals, we mean those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy, whether out of society, or in it."—*Blackstone, Vol.* 1, *p.* 123.

"The principal aim of society (government) is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without that mutual assistance and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals. Such rights as are social and relative result from, and are posterior to, the formation of states and societies; so that to maintain and regulate these, is clearly a subsequent consideration. And therefore the principal view of human laws is, or ought always to be, to explain, protect, and enforce such rights as are absolute; which, in themselves, are few and simple: and then such rights as are relative, which, arising from a variety of connexions, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more attended to, though in reality they are not, than the rights of the former kind."—*Blackstone, Vol.* 1, *p.* 124.

"The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature, being a right inherent in us by birth, and one of the gifts of God to

claim that in the interpretation of all statutes and constitutions, the ordinary legal rules of interpretation be observed. The most important of these rules, and the one to which it will be necessary constantly to refer, is the one that all lan-

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man at his creation, when he endowed him with the faculty of free will."—*Blackstone, Vol.* 1, *p.* 125.

"Moral or natural liberty, (in the words of Burlamaqui, ch. 3, s. 15,) is the right, which nature gives to all mankind of disposing of their persons and property after the manner they judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and that they do not any way abuse it to the prejudice of any other men."—*Christian's note, Blackstone, Vol.* 1, *p.* 126.

All the foregoing definitions of law, rights and natural liberty, although some of them are expressed in somewhat vague and indefinite terms, nevertheless recognize the primary idea, that law is a fixed principle, resulting from men's natural rights; and that therefore the acknowledgment and security of the natural rights of individuals constitute the whole basis of law as a science, and a *sine qua non* of government as a legitimate institution.

And yet writers generally, who acknowledge the true theory of government and law, will nevertheless, when discussing matters of legislation, violate continually the fundamental principles with which they set out. On some pretext of promoting a great public good, the violation of individual rights will be justified in particular cases; and the guardian principle being once broken down, nothing can then stay the irruption of the whole horde of pretexts for doing injustice; and government and legislation thenceforth become contests between factions for power and plunder, instead of instruments for the preservation of liberty and justice equally to all.

The current doctrine that private rights must yield to the public good, amounts, in reality, to nothing more nor less than this, that an individual or the minority must consent to have less than their rights, in order that other individuals, or the majority, may have more than their rights. On this principle no honest government could ever be formed by voluntary contract, (as our governments purport to be;) because no man of common sense would consent to be one of the plundered minority, and no honest man could wish to be one of the plundering majority.

The apology, that is constantly put forth for the injustice of government, viz., that a man must consent to give up some of his rights, in order to have his other rights protected—involves a palpable absurdity, both legally and politically. It is an absurdity in law, because it says that the law must be violated in some cases, in order that it may be maintained in others. It is an absurdity politically, because a man's giving up one of his rights has no tendency whatever to promote the protection of others. On the contrary, it only renders him less capable of defending himself, and consequently makes the task of his protection more burdensome to the government. At the same time it places him in the situation of one who has conceded a part of his rights, and thus cheapened the character of all his rights in the eyes of those of whom he asks assistance. There would be as much reason in saying that a man must consent to have one of his hands tied behind him, in order that his friends might protect the rest of his body against an enemy, as there is in saying that a man must give up some of his rights in order that government may protect the remainder. Let a man have the use of both his hands, and the enjoyment

guage must be construed strictly in favor of natural right.—The rule is laid down by the Supreme Court of the United States in these words, to wit:

"Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a design to effect such objects."*

It will probably appear from this examination of the written constitutions, that slavery neither has, *nor ever had* any

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of all his rights, and he will then be more competent to his own defence; his rights will be more respected by those who might otherwise be disposed to invade them; he will want less the assistance and protection of others; and we shall need much less government than we now have.

If individuals choose to form an association or government, for the mutual protection of each other's rights, why bargain for the protection of an *indefinite* portion of them, at the price of giving to the association itself liberty to violate the equally indefinite remainder? By such a contract, a man really surrenders every thing, and secures nothing. Such a contract of government would be a burlesque on the wisdom of asses. Such a contract never was, nor ever will be *voluntarily* formed. Yet all our governments act on that principle; and so far as they act upon it, they are as essentially usurping and tyrannical as any governments can be. If a man pay his proportion of the aggregate cost of protecting all the rights of each of the members of the association, he thereby acquires a claim upon the association to have his own rights protected without diminution.

The ultimate truth on this subject is, that man has an inalienable right to so much personal liberty as he will use without invading the rights of others. This liberty is an inherent right of his nature and his faculties. It is an inherent right of his nature and his faculties to develope themselves freely, and without restraint from other natures and faculties, that have no superior prerogatives to his own. And this right has only this limit, viz., that he do not carry the exercise of his own liberty so far as to restrain or infringe the equally free developement of the natures and faculties of others. The dividing line between the equal liberties of each must never be transgressed by either. This principle is the foundation and essence of law and of civil right. And legitimate government is formed by the voluntary association of individuals, for the mutual protection of each of them in the enjoyment of this natural liberty, against those who may be disposed to invade it. Each individual being secured in the enjoyment of this liberty, must then take the responsibility of his own happiness and well-being. If his necessities require more than his faculties will supply, he must depend upon the voluntary kindness of his fellow-men; unless he be reduced to that extremity where the necessity of self-preservation over-rides all abstract rules of conduct, and makes a law for the occasion—an extremity, that would probably never occur but for some antecedent injustice.

*United States *vs.* Fisher, 2 Cranch, 390.

constitutional existence in this country; that it has always been a mere abuse, sustained, in the first instance, merely by the common consent of the strongest party, without any law on the subject, and, in the second place, by a few unconstitutional enactments, made in defiance of the plainest provisions of their fundamental law.

For the more convenient consideration of this point, we will divide the constitutional history of the country into three periods; the first embracing the time from the first settlement of the country up to the Declaration of Independence; the second embracing the time from the Declaration of Independence to the adoption of the Constitution of the United States in 1789; and the third embracing all the time since the adoption of the Constitution of the United States.

Let us now consider the first period; that is, from the settlement of the country, to the Declaration of Independence.

CHAPTER III.

THE COLONIAL CHARTERS.

When our ancestors came to this country, they brought with them the common law of England, including the writ of *habeas corpus*, (the essential principle of which, as will hereafter be shown, is to deny the right of property in man,) the trial by jury, and the other great principles of liberty, which prevailed in England, and which have made it impossible that her soil should be trod by the foot of a slave.

These principles were incorporated into all the charters, granted to the colonies, (if all those charters were like those I have examined, and I have examined nearly all of them.)—The general provisions of those charters, as will be seen from the extracts given in the note, were, that the laws of the colonies should "not be repugnant or contrary, but as nearly as circumstances would allow, conformable to the laws, statutes and rights of our kingdom of England." *

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* The second charter to Virginia (1609) grants the power of making "orders, ordinances, constitutions, directions and instructions," "so always as the said statutes, ordinances and proceedings, as near as conveniently may be, be agreeable to the laws, statutes, government and policy of this our realm of England."

The third charter (1611—12) gave to the "General Court" "power and authority" to "make laws and ordinances" "so always as the same be not contrary to the laws and statutes of our realm of England."

The first charter to Carolina, (including both North and South Carolina,) dated 1663, authorized the making of laws under this proviso—"Provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our kingdom of England."

The second charter (1665) has this proviso. "Provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England."

The charter to Georgia, (1732,) an hundred years after slavery had actually existed

Those charters were the fundamental constitutions of the colonies, with some immaterial exceptions, up to the time of the revolution; as much so as our national and state constitutions are now the fundamental laws of our governments.

The authority of these charters, during their continuance, and the general authority of the common law, prior to the revolution, have been recognized by the Supreme Court of the United States. *

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in Virginia, makes no mention of slavery, but requires the laws to be "reasonable and not repugnant to the laws of this our realm." "The said corporation shall and may form and prepare laws, statutes and ordinances fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of England."

The charter to Maryland gave the power of making laws, "So, nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be,) agreeable to the laws, statutes, customs, and rights of this our kingdom of England."

The charter granted to Sir Edward Plowden had this proviso. "So, nevertheless, that the laws aforesaid be consonant to reason, and not repugnant and contrary, (but as convenient as may be to the matter in question,) to the laws, statutes, customs and rights of our kingdoms of England and Ireland."

In the charter to Pennsylvania, power was granted to make laws, and the people were required to obey them, "Provided nevertheless that the said laws be consonant to reason, and be not repugnant or contrary, but, as near as conveniently may be, agreeable to the laws, statutes, and rights of this our kingdom of England."

I have not been able to find a copy of the charter granted to the Duke of York, of the territory comprising New York, New Jersey, &c. But Gordon, in his history of the American Revolution, (vol. 1, p. 43,) says, "The king's grant to the Duke of York, is plainly restrictive to the laws and government of England."

The charter to Connecticut gave power "Also from time to time, to make, ordain and establish all manner of wholesome and reasonable laws, statutes, ordinances, directions and instructions, not contrary to the laws of this realm of England."

The charter to the Massachusetts Bay Colony, (granted by William and Mary,) gave "full power and authority, from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to the laws of this our realm of England."

The charter to Rhode Island granted the power of making laws, "So as such laws, ordinances, constitutions, so made, be not contrary and repugnant unto, but (as near as may be) agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."

Several other charters, patents, &c. that had a temporary existence, might be named, that contained substantially the same provision.

* In the case of the town of Pawlet *v.* Clark and others, the court say —

"Let us now see how far these principles were applicable to New Hampshire, at the time of issuing the charter to Pawlet.

"New Hampshire was originally erected into a royal province in the thirty-first

No one of all these charters that I have examined—and I have examined nearly all of them—contained the least intimation that slavery had, or could have, any legal existence under them. Slavery was therefore as much unconstitutional in the colonies, as it was in England.

It was decided by the Court of King's Bench in England—Lord Mansfield being Chief Justice—before our revolution, and while the English Charters were the fundamental law of the colonies—that the principles of English liberty were so plainly incompatible with slavery, that even if a slaveholder, from another part of the world, brought his slave into England—though only for a temporary purpose, and with no intention of remaining—he nevertheless thereby gave the slave his liberty.

Previous to this decision, the privilege of bringing slaves into England, for temporary purposes, and of carrying them away, had long been tolerated.

This decision was given in the year 1772.* And for aught I see, it was equally obligatory in this country as in England, and must have freed every slave in this country, if the question had then been raised here. But the slave knew not his rights, and had no one to raise the question for him.

The fact, that slavery was *tolerated* in the colonies, is no evidence of its legality; for slavery was tolerated, to a cer-

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year of Charles II., and from thence until the revolution continued a royal province, under the immediate control and direction of the crown. By the first royal commission granted in 31 Charles II., among other things, judicial powers, in all actions, were granted to the provincial governor and council, 'So always that the form of proceeding in such cases, and the judgment thereupon to be given, be as consonant and agreeable to the laws and statutes of this our realm of England, as the present state and condition of our subjects inhabiting within the limits aforesaid (i. e. of the province) and the circumstances of the place will admit.' *Independent, however, of such a provision, we take it to be a clear principle that the common law in force at the emigration of our ancestors, is deemed the birthright of the colonies, unless so far as it is inapplicable to their situation, or repugnant to their other rights and privileges. A fortiori* the principle applies to a royal province."—(9 Cranch's U. State's Reports, 332—3.

* Somerset *v.* Stewart.—Lofft's Reports, p. 1 to 19, of Easter Term, 1772. In the Dublin edition the case is not entered in the Index.

tain extent, in England, (as we have already seen,) for many years previous to the decision just cited—that is, the holders of slaves from abroad were allowed to bring their slaves into England, hold them during their stay there, and carry them away when they went. But the toleration of this practice did not make it lawful, notwithstanding all customs, not palpably and grossly contrary to the principles of English liberty, have great weight, in England, in establishing law.

The fact, that England *tolerated*, (i. e. did not punish criminally,) the African *slave-trade* at that time, could not legally establish slavery in the colonies, *any more than it did in England*—especially in defiance of the positive requirements of the charters, that the colonial legislation should be consonant to reason, and not repugnant to the laws of England.

Besides, the mere toleration of the slave *trade* could not make slavery itself—*the right of property in man*—lawful any where; not even on board the slave ship. Toleration of a wrong is not law. And especially the toleration of a wrong, (i. e. the bare omission to punish it criminally,) does not legalize one's claim to property obtained by such wrong. Even if a wrong can be legalized at all, so as to enable one to acquire rights of property by such wrong, it can be done only by an explicit and positive provision.

The English statutes, on the subject of the slave trade, (so far as I have seen,) never attempted to legalize the right of property in man, *in any of the thirteen North American colonies.* It is doubtful whether they ever attempted to do it any where else. It is also doubtful whether Parliament had the power—or perhaps rather it is certain that they had not the power—to legalize it any where, if they had attempted to do so.* And the cautious and curious phraseology of

* Have parliament the constitutional prerogative of abolishing the writ of *habeas corpus*? the trial by jury? or the freedom of speech and the press? If not, have they the prerogative of abolishing a man's right of property in his own person?

their statutes on the subject, indicates plainly that they themselves either doubted their power to legalize it, or feared to exercise it. They have therefore chosen to connive at slavery, to insinuate, intimate, and imply their approbation of it, rather than risk an affirmative enactment declaring that one man may be the property of another. But Lord Mansfield said, in Somerset's case, that slavery was "*so odious that nothing can be suffered to support it, but positive law.*"—No such positive law (I presume) was ever passed by parliament—certainly not with reference to any of these thirteen colonies.

The statute of 1788, (which I have not seen,) in regard to the slave *trade*, may perhaps have relieved those engaged in it, in certain cases, from their liability to be punished criminally for the act. But there is a great difference between a statute, that should merely screen a person from punishment for a crime, and one that should legalize his right to property acquired by the crime. Besides, this act was passed after the separation between America and England, and therefore could have done nothing towards legalizing slavery in the United States, even if it had legalized it in the English dominions.

The statutes of 1750, (23, George 2d, Ch. 31,) may have possibly authorized, by implication, (so far as parliament could thus authorize,) the colonial governments, (if governments they could be called,) *on that coast of Africa*, to allow slavery under certain circumstances, *and within the "settlements" on that coast.* But, if it did, it was at most a grant of a merely local authority. It gave no authority to carry slaves from the African coast. But even if it had purported distinctly to authorize the slave trade from Africa to America, and to legalize the right of property in the particular slaves thereafter brought from Africa to America, it would nevertheless have done nothing towards legalizing the right of property in the slaves that had been brought to, and born in, the colonies for an hundred and thirty years previous to the statute. Neither the statute, nor any right of property

acquired under it, (in the individual slaves thereafterwards brought from Africa,) would therefore avail anything for the legality of slavery in this country now; because the descendants of those brought from Africa under the act, cannot now be distinguished from the descendants of those who had, for the hundred and thirty years previous, been held in bondage without law.

But the presumption is, that, even after this statute was passed in 1750, if the slave trader's *right of property* in the slave he was bringing to America, could have been brought before an English court for adjudication, the same principles would have been held to apply to it, as would have applied to a case arising within the island of Great Britain. And it must therefore always have been held by English courts, (in consistency with the decision in Somerset's case,) that the slave trader had no legal ownership of his slave. And if the slave trader had no legal right of property in his slave, he could transfer no legal right of property to a purchaser in the colonies. Consequently the slavery of those that were brought into the colonies after the statute of 1750, was equally illegal with that of those who had been brought in before.*

* Mr. Bancroft, in the third volume of his history, (pp. 413, 14,) says:

"And the statute book of England soon declared the opinion of its king and its parliament, that 'the trade,'" (by which he means the *slave* trade, of which he is writing,) 'is highly beneficial and advantageous to the kingdom and the colonies.' To prove this he refers to statute of "1795, 8 and 10 Wm. 3, ch. 26." (Should be 1797, 8—9 and 10 Wm. 3, ch. 26.)

Now the truth is that, although this statute may have been, and very probably was designed to *insinuate* to the slave traders the personal approbation of parliament to the slave trade, yet the statute itself says not a word of slaves, slavery, or the slave trade, except to forbid, under penalty of five hundred pounds, any governor, deputy-governor or judge, in the colonies or plantations in America, or any other person or persons, for the use or on the behalf of such governor, deputy-governor or judges, to be "a factor or factor's agent or agents" "for the sale or disposal of any negroes."

The statute does not declare, as Mr. Bancroft asserts, that "the (slave) trade is highly beneficial and advantageous to the kingdom and the colonies;" but that "*the trade to Africa* is highly beneficial and advantageous," &c. It is an *inference* of Mr. Bancroft's that "the trade to Africa" was the *slave* trade. Even this inference is

The conclusion of the whole matter is, that until some reason appears against them, we are bound by the decision of

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not justified by the words of the statute, considering them in that legal view, in which Mr. Bancroft's remarks purport to consider them.

It is true that the statute assumes that "*negroes*" will be "imported" from Africa into "England," (where of course they were not slaves,) and into the "plantations and colonies in America." But it nowhere calls these "negroes" *slaves*, nor assumes that they are slaves. For aught that appears from the statute, they were free men and passengers, voluntary emigrants, going to "England" and "the plantations and colonies" as laborers, as such persons are now going to the British West Indies.

The statute, although it apparently desires to insinuate or faintly imply that they are property, or slaves, nevertheless studiously avoids to acknowledge them as such distinctly, or even by any necessary implication; for it exempts them from duties as merchandize, and from forfeiture for violation of revenue laws, and it also relieves the masters of vessels from any obligation to render any account of them at the custom houses.

When it is considered that slavery, property in man, can be legalized, according to the decision of Lord Mansfield, by nothing less than positive law; that the rights of property and person are the same on board an English ship, as in the island of Great Britain; and that this statute implies that these "negroes" were to be "imported" into "England," as well as into the "Plantations and colonies in America," and that it therefore no more implies that they were to be *slaves* in "the plantations and colonies" than in "England," where we know they could not be slaves; when these things are considered, it is perfectly clear, as a *legal* proposition, that the statute legalized neither slavery in the plantations and colonies, nor the slave trade from Africa to America — however we may suppose it to have been designed to hint a personal approbation, on the part of parliament, of the actual traffic.

But lest I may be suspected of having either misrepresented the words of the statute. or placed upon them an erroneous legal construction, I give *all* the words of the statute, that make any mention of "negroes," or their importation, with so much of the context as will enable the reader to judge for himself of the legal import of the whole.

The act is entitled, "*An Act to settle the Trade to Africa.*" Sec. 1 recites as follows: —

"Whereas, the Trade to Africa is highly beneficial and advantageous to this kingdom and to the Plantations and Colonies thereunto belonging."

The act contains *twenty-one* sections, regulating trade, duties. &c., like any other navigation act. "Negroes" are mentioned only in the following instances and connexions, to wit:

Sec. 7. "And be it enacted by the authority aforesaid, That from and after the four-and-twentieth day of June, one thousand six hundred ninety-and-eight, it shall and may be lawful to and for any of the subjects of his majesty's realms of England, as well as the said Company,* to trade from England or any of his majesty's plantations or colonies in America to the coast of Africa, between Blanco and Cape Mount, answering and paying a duty of ten pounds per centum ad valorem for the goods and merchandizes to be exported from England or any of his majesty's plantations or colonies in America to and for the coast of Africa, between Cape Blanco

* The Royal African Company.

the King's bench in 1772, and the colonial charters. That decision declared that there was, at that time, in England, no

and Cape Mount, and in proportion for a greater or lesser value, and answering and paying a further sum and duty of ten pounds per centum ad valorem, redwood only excepted, which is to pay five pounds per centum ad valorem, at the place of importation upon all goods and merchandize (negroes excepted) imported in (into) England or any of his majesty's plantations or colonies in America, from the coast of Africa, between Cape Blanco and Cape Mount aforesaid. * * * And that all goods and merchandize, (negroes excepted,) that shall be laded or put on board any ship or vessel on the coast of Africa, between Cape Blanco and Cape Mount, and shall be imported into England or into any of his majesty's plantations or colonies aforesaid, shall answer and pay the duties aforesaid, and that the master or chief officer of every such ship or vessel that shall lade or receive any goods or merchandize (negroes excepted) on board of his or their ship or vessel between Cape Blanco and Cape Mount, shall upon making entry at any of his majesty's custom houses aforesaid of the said ship or vessel, or before any goods or merchandize be landed or taken out of the said ship or vessel (negroes excepted) shall deliver in a manifest or particular of his cargo, and take the following oath, viz.

I, A. B, do swear that the manifest or particular now by me given in and signed, to the best of my knowledge and belief doth contain, signify and express all the goods, wares and merchandizes (negroes excepted) which were laden or put on board the ship called the ——— ———, during her stay and continuing on the coast of Africa between Cape Blanco and Cape Mount, whereof I, A. B. am master."

Sec. 8. " And that the owner or importer of all goods and merchandize (negroes excepted) which shall be brought to England or any of his majesty's plantations from any port of Africa between Cape Blanco and Cape Mount aforesaid shall make entry of all such goods and merchandize at one of his majesty's chief custom houses in England, or in such of his majesty's plantations where the same shall be imported," &c.

Sec. 9. * * * " that all goods or merchandizes (negroes excepted) which shall be brought from any part of Africa, between Cape Blanco and Cape Mount aforesaid, which shall be unladed or landed before entry made and signed and oath of the true and real value thereof made and the duty paid as aforesaid shall be forfeited, or the value thereof."

Sec. 20. " And be it further enacted by the authority aforesaid, that no governor, or deputy-governor of any of his majesty's colonies or plantations in America, or his majesty's judges in any courts there for the time being, nor any other person or persons for the use or on behalf of such governor or deputy-governor or judges, from and after the nine-and-twentieth day of September, one thousand six hundred and ninety-eight, shall be a factor or factor's agent or agents for the said Company,* or any other person or persons for the sale or disposal of any negroes, and that every person offending herein shall forfeit five hundred pounds to the uses aforesaid, to be recovered in any of his majesty's courts of record at Westminster, by action of debt, bill, plaint or information, wherein no essoign, protection, privilege or wager of law shall be allowed, nor any more than one imparlance."

* The Royal African Company.

right of property in man, (notwithstanding the English government had for a long time connived at the slave trade.)—

Sec. 21. "Provided that this act shall continue and be in force *thirteen years*, and from thence to the end of the next sessions of parliament, and no longer."

Even if this act had legalized, (as in reality it did not legalize,) the slave trade during those thirteen years, it would be impossible now to distinguish the descendants of those who were imported under it, from the descendants of those who had been previously, and were subsequently imported and sold into slavery without law. The act would therefore avail nothing towards making the existing slavery in this country legal.

The next statute, of which I find any trace, passed by parliament, with any apparent view to countenance the slave trade, was the statute of 23d George II., ch. 31. (1749—50.)

Mr. Bancroft has committed another still more serious error in his statement of the *words*, (for he professes to quote precise words,) of this statute. He says, (vol. 3, p. 414,)

"At last, in 1749, to give the highest activity to the trade, (meaning the slave trade,) every obstruction to private enterprize was removed, and the ports of Africa were laid open to English competition, for 'the *slave* trade,'—such" (says Mr. Bancroft,) "are the words of the statute—'the *slave* trade is very advantageous to Great Britain.'"

As words are, in this case, things—and things of the highest *legal* consequence—and as this history is so extensively read and received as authority—it becomes important, in a legal, if not historical, point of view, to correct so important an error as that of the word *slave* in this statement. "The *words* of the statute" are *not* that "the *slave* trade," but that "*the trade to and from Africa* is very advantageous to Great Britain." "The trade to and from Africa" no more means, *in law*, "the *slave* trade," than does the trade to and from China. From aught that appears, then, from *so much* of the preamble, "the trade to and from Africa" may have been entirely in other things than slaves. And it actually appears from another part of the statute, that trade was carried on in "gold, elephant's teeth, wax, gums and drugs."

From the words immediately *succeeding* those quoted by Mr. Bancroft from the preamble to this statute, it might much more plausibly, (although even from them it could not be legally) inferred that the statute legalized the slave trade, than from those pretended to be quoted by him. That the succeeding words may be seen, the title and preamble to the act are given, as follows:

"*An Act for extending and improving the trade to Africa.*"

"Whereas, the trade to and from Africa is very advantageous to Great Britain, *and necessary for supplying the plantations and colonies thereunto belonging, with a sufficient number of* NEGROES *at reasonable rates;* and for that purpose the said trade" (i. e. "the trade to and from Africa") "ought to be free and open to all his majesty's subjects. Therefore be it enacted," &c.

"Negroes" were not slaves by the English law, and therefore the word "negroes," in this preamble, does not *legally* mean slaves. For aught that appears from the words of the preamble, *or even from any part of the statute itself*, these "negroes," with whom it is declared to be necessary that the plantations and colonies should be supplied, were free persons, voluntary emigrants, that were to be induced to go to the plantations as hired laborers, as are those who, at this day, are induced,

The colonial charters required the legislation of the colonies to be consonant to reason, and not repugnant or contrary,

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in large numbers, and by the special ageeny of the English government, to go to the British West Indies. In order to facilitate this emigration, it was necessary that "the trade to and from Africa" should be encouraged. And the form of the preamble is such as it properly might have been, if such had been the real object of parliament. Such is undoubtedly the true *legal* meaning of this preamble, for this meaning being consistent with natural right, public policy, and with the fundamental principles of English law, legal rules of construction imperatively require that this meaning should be ascribed to it, rather than it should be held to authorize anything contrary to natural right, or contrary to the fundamental principles of British law.

We are obliged to put this construction upon this preamble, for the further reason that it corresponds with the enacting clauses of the statute — not one of which mentions such a thing *as the transportation of slaves to, or the sale of slaves in* "the plantations and colonies." The first section of the act is in these words, to wit.

"That it shall and may be lawful for all his majesty's subjects to trade and traffic to and from any port or place in Africa, between the port of Sallee in South Barbary, and the Cape of Good Hope, when, at such times, and in such manner, and in or with such quantity of *goods, wares and merchandizes*, as he or they shall think fit, without any restraint whatsoever, save as is herein after expressed."

Here plainly is no authority given "to trade and traffic" in any thing except what is known either to the English law, or the law of nature, as "goods, wares or merchandizes" — among which *men* were *not* known, either to the English law, or the law of nature.

The second section of the act is in these words:

"That all his majesty's subjects, who shall trade to or from any of the ports or places of Africa, between Cape Blanco and the Cape of Good Hope, shall forever hereafter be a body corporate and politic, in name and in deed, by the name of the Company of Merchants Trading to Africa, and by the same name shall have perpetual succession, and shall have a common seal, and by that name shall and may sue, and be sued, and do any other act, matter and thing, which any other body corporate or politic, as such, may lawfully do."

Neither this nor any other section of the act purports to give this "Company," in its corporate capacity, any authority to buy or sell slaves, or to transport slaves to the plantations and colonies.

The 29th section of the act is in these words:

"And be it further enacted by the authority aforesaid, that no commander or master of any ship trading to Africa, shall by *fraud, force or violence*, or by any other indirect practice whatsoever, take on board, or carry away from the coast of Africa, any negro or native of the said country, or commit, or suffer to be committed, any violence on the natives, to the prejudice of the said trade; and that every person so offending shall, for every such offence, forfeit the sum of one hundred pounds of lawful money of Great Britain; one moiety thereof to the use of the said Company hereby established, and their successors, for and towards the maintaining of said forts and settlements, and the other moiety to and for the use of him or them who shall inform or sue for the same."

Now, although there is perhaps no good reason to doubt that the *secret* intention of parliament in the passage of this act, was to stimulate the slave trade, and that there

but conformable, or agreeable, as nearly as circumstances would allow, to the laws, statutes and rights of the realm of

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was a tacit understanding between the government and the slave dealers, that the slave trade should go on unharmed (in practice) by the government, and although it was undoubtedly understood that this penalty of one hundred pounds would either not be sued for at all, or would be sued for so seldom as *practically* to interpose no obstacle to the general success of the trade, still, as no part of the whole statute gives any authority to this "Company of Merchants trading to Africa" to transport men from Africa against their will, and as this 29th section contains a special prohibition to individuals, under penalty, to do so, no one can pretend that the trade was legalized. If the penalty had been but one pound, instead of one hundred pounds, it would have been sufficient, *in law*, to have rebutted the pretence that the trade was legalized. The act, on its face, and in its legal meaning, is much more an act to prohibit, than to authorize the slave trade.

The only possible *legal* inference from the statute, *so far as it concerns the "supplying the plantations and colonies with negroes at reasonable rates,"* is, that these negroes were free laborers, voluntary emigrants, that were to be induced to go to the plantations and colonies; and that "the trade to and from Africa" was thrown open in order that the facilities for the transportation of these emigrants might be increased.

But although there is, in this statute, no authority given for—but, on the contrary, a special prohibition upon—the transportation of the natives from Africa against their will, yet I freely admit that the statute contains one or two strong, perhaps decisive implications in favor of the fact that slavery was allowed in the English settlements *on the coast of Africa*, apparently in conformity with the customs of the country, and with the approbation of parliament. But that is the most that can be said of it. Slavery, wherever it exists, is a local institution; and its toleration, or even its legality, *on the coast of Africa*, would do nothing towards making it legal in any other part of the English dominions. Nothing but positive and explicit legislation could transplant it into any other part of the empire.

The implications, furnished by the act, in favor of the toleration of slavery, in the English settlements, on the coast of Africa, are the following:

The third section of the act refers to another act of parliament "divesting the Royal African Company of their *charter*, forts, castles and military stores, canoe-men and *castle-slaves*;" and section thirty-first requires that such "officers of his majesty's navy," as shall be appointed for the purpose, "shall inspect and examine the state and condition of the forts and settlements on the coast of Africa, in the possession of the Royal African Company, and of the number of soldiers therein, and also the state and condition of the military stores, castles, *slaves*, canoes and other vessels and things, belonging to the said company, *and necessary for the use and defence of the said forts and settlements*, and shall with all possible despatch report how they find the same."

Here the fact is stated that the "Royal African Company," (a company that had been in existence long previous to the passing of this act,) had held "castle-slaves" "for the use and defence of the said forts and settlements." The act does not say directly whether this practice was legal or illegal; although it seems to imply that, whether legal or illegal, it was tolerated with the knowledge and approbation of parliament.

But the most distinct approbation given to slavery by the act, is implied in the 28th section, in these words:

England." That decision, then, if correct, settled the law both for England and the colonies. And if so, there was no *constitutional* slavery in the colonies up to the time of the revolution.

"That it shall and may be lawful for any of his majesty's subjects trading to Africa, for the security of their goods and *slaves*, to erect houses and warehouses, under the protection of the said forts," &c.

Although even this language would not be strong enough to overturn previously established principles of English law, and give the slave holders a legal right of property in their slaves, in any place where English law had previously been expressly established, (as it had been in the North American colonies,) yet it sufficiently evinces that parliament approved of Englishmen holding slaves in the settlements *on the coast of Africa*, in conformity with the customs of that country. But it implies no authority for transporting their slaves to America; it does nothing towards legalizing slavery in America; it implies no *toleration* even of slavery any where, except upon the coast of Africa. Had slavery been positively and explicitly legalized on the coast of Africa, it would still have been a local institution.

This reasoning may appear to some like quibbling; and it would perhaps be so, were not the rule well settled that nothing but explicit and irresistible language can be legally held to authorize anything inconsistent with natural right, and with the fundamental principles of a government.

That this statute did not legalize the right of property in man, (unless as a local principle on the coast of Africa,) we have the decision of Lord Mansfield, who held that it did not legalize it in England; and if it did not legalize it in England, it did not legalize it in any of the colonies where the principles of the common law prevailed. Of course it did not legalize it in the North American colonies.

But even if it were admitted that this statute legalized the right of property, on the part of the slave trader, in his slaves taken in Africa after the passage of the act, and legalized the sale of such slaves in America, still the statute would be ineffectual to sustain the legality of slavery, *in general*, in the colonies. It would only legalize the slavery of those particular individuals, who should be transported from Africa to America, subsequently to the passage of this act, and in strict conformity with the law of this act—(a thing, by the way, that could now be proved in no case whatever.) This act was passed in 1749—50, and could therefore do nothing towards legalizing the slavery of all those who had, for an hundred and thirty years previous, been held in bondage in Virginia and elsewhere. And as no distinction can now be traced between the descendants of those who were imported under this act, and those who had illegally been held in bondage prior to its passage, it would be of no practical avail to slavery now, to prove, (if it could be proved,) that those introduced into the country subsequent to 1750, were legally the property of those who introduced them.

CHAPTER IV.

COLONIAL STATUTES.

But the colonial legislation on the subject of slavery, was not only void as being forbidden by the colonial charters, but in many of the colonies it was void for another reason, viz: *that it did not sufficiently define the persons who might be made slaves.*

Slavery, if it can be legalized at all, can be legalized only by positive legislation. Natural law gives it no aid. Custom imparts to it no legal sanction. This was the doctrine of the King's Bench in Somerset's case, as it is the doctrine of common sense. Lord Mansfield said, "So high an act of dominion must be recognized by the law of the country where it is used. * * * The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political—but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from the memory. It is so odious that nothing can be suffered to support it but positive law."

Slavery, then, being the creature of positive legislation alone, can be created only by legislation that shall so particularly describe the persons to be made slaves, that they may be distinguished from all others. If there be any doubt left by the *letter* of the law, as to the persons to be made slaves, the efficacy of all other slave legislation is defeated simply by that uncertainty.

In several of the colonies, including some of those where slaves were most numerous, there were either no laws at all defining the persons who might be made slaves, or the laws,

which attempted to define them, were so loosely framed that it cannot now be known who are the descendants of those designated as slaves, and who of those held in slavery without any color of law. As the presumption must — *under the United States constitution*—and indeed under the state constitutions also—be always in favor of liberty, it would probably now be impossible for a slaveholder to prove, in one case in an hundred, that his slave was descended, (through the maternal line, according to the slave code,) from any one who was originally a slave within the description given by the statutes.

When slavery was first introduced into the country, there were no laws at all on the subject. Men bought slaves of the slave traders, as they would have bought horses; and held them, and compelled them to labor, as they would have done horses, that is, by brute force. By common consent among the white race, this practice was tolerated without any law.— At length slaves had in this way become so numerous, that some regulations became necessary, and the colonial governments began to pass statutes, which *assumed* the existence of slaves, although no laws defining the persons who might be made slaves, had ever been enacted. For instance, they passed statutes for the summary trial and punishment of slaves; statutes permitting the masters to chastise and baptise their slaves,* and providing that baptism should not be considered,

* *"Chastised."* An act passed in South Carolina in 1740, authorized slaves to sue for their liberty, by a guardian appointed for the purpose. The act then provides that if judgment be for the slave, he shall be set free, and recover damages; "but in case judgment shall be given for the defendant, (the master,) the said court is hereby fully empowered to inflict such corporeal punishment, not extending to life or limb, on the ward of the plaintiff, (the slave) as they in their discretion shall see fit."

Brevard's Digest, vol. 2, p 130.

"Baptised." In 1712 South Carolina passed this act:

"Since charity and the Christian religion which we profess, obliges us to wish well to the souls of all men, and that religion may not be made a pretence to alter any man's property and right, and that no persons may neglect to baptize their negroes or slaves, or suffer them to be baptized, for fear that thereby they should be manumitted and set free: *Be it therefore enacted*, That it shall be, and is hereby declared lawful for any negro or Indian slave, or any other slave or slaves whatsoever, to re-

in law, an emancipation of them. Yet all the while no act had been passed declaring who might be slaves. Possession was apparently all the evidence that public sentiment demanded, of a master's property in his slave. Under such a code, multitudes, who had either never been purchased as slaves, or who had once been emancipated, were doubtless seized and reduced to servitude by individual rapacity, without any more public cognizance of the act, than if the person so seized had been a stray sheep.

Virginia. Incredible as it may seem, slavery had existed in Virginia fifty years before even a statute was passed for the purpose of declaring who might be slaves; and then the persons were so described as to make the designation of no legal effect, at least as against Africans generally. And it was not until seventy eight years more, (an hundred and twenty-eight years in all,) that any act was passed that would cover the case of the Africans generally, and make them slaves. Slavery was introduced in 1620, but no act was passed even purporting to declare who might be slaves, until 1670. In that year a statute was passed in these words: "That all *servants*, not being Christians, imported into this country by shipping, shall be slaves for their lives." *

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ceive and profess the Christian faith, and be thereunto baptised. But that notwithstanding such slave or slaves shall receive and profess the Christian religion, and be baptised, he or they shall not thereby be manumitted or set free, or his or their owner, master or mistress lose his or their civil right, property and authority over such slave or slaves, but that the slave or slaves, with respect to his or their servitude, shall remain and continue in the same state and condition, that he or they was in before the making of this act."—*Grimke, p.* 18. *Brevard, vol. 2, p.* 229.

In 1667, the following statute was passed in Virginia:

"Whereas, some doubts have arisen whether children that are slaves by birth, and by the charity and piety of their owners made partakers of the blessed sacrament of baptism, should by virtue of their baptism be made free; *It is enacted and declared by this grand assembly, and the authority thereof,* that the confering of baptism doth not alter the condition of the person as to his bondage or freedom; that divers masters, freed from this doubt, may more carefully endeavor the propagation of Christianity by permitting children, though slaves, or those of greater growth, if capable to be admitted to that sacrament."—*Hening's Statutes, vol 2, p.* 260.

* Hening, vol. 2, p. 283.

This word "servants" of course legally describes individuals known as such to the laws, and distinguished as such from other persons generally. But no class of Africans "imported," were known as "servants," as distinguished from Africans generally, or in any manner to bring them within the legal description of "servants," as here used. In 1682 and in 1705 acts were again passed declaring "that all servants," &c., imported, should be slaves. And it was not until 1748, *after slavery had existed an hundred and twenty-eight years*, that this description was changed for the following:

"That all *persons*, who have been or shall be imported into this colony," &c., &c., shall be slaves. *

In 1776, the only statute in Virginia, under which the slave-holders could make any claim at all to their slaves, was passed as late as 1753, (one hundred and thirty-three years after slavery had been introduced;) all prior acts having been then repealed, without saving the rights acquired under them. †

Even if the colonial charters had contained no express pro-

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* Hening, vol. 5, p. 547–8.

† In 1753 Virginia passed a statute, occupying some twelve or fifteen pages of the statute book, and intended to cover the whole general subject of slavery. One of the sections of this act is as follows:

"That all and every other act and acts, clause and clauses, heretofore made, for or concerning any matter or thing within the provision of this act, shall be and are hereby repealed."—*Hening's Statutes, vol. 6, p. 369.*

No reservation being made, by this section, of rights acquired under former statutes, and slave property being a matter dependent entirely upon statute, all title to slave property, acquired under former acts, was by this act annihilated; and all the slaves in the State were made freemen, *as against all prior legislation.* And the slaves of the State were thenceforward held in bondage only by virtue of another section of the same act, which was in these words:

"That all persons *who have been,* or shall be imported into this colony, by sea or land, and were not Christians in their native country, except Turks and Moors in amity with his majesty, and such who can prove their being free in England, or any other Christian country, before they were shipped for transportation hither, shall be accounted slaves, and as such be here bought and sold, notwithstanding a conversion to Christianity after their importation."—*Hening, vol. 6, p. 356–7.*

The act also provided, "That all children shall be bond or free, according to the condition of their mothers and the particular directions of this act."

hibition upon slave laws, it would nevertheless be absurd to pretend that the colonial legislature had power, in 1753, to look back an hundred and thirty-three years, and arbitrarily reduce to slavery all colored persons that had been imported into, or born in the colony within that time. If they could not do this, then it follows that all the colored persons in Virginia, up to 1753, (only twenty-three years before the revolution,) and all their descendants to the present time, were and are free; and they cannot now be distinguished from the descendants of those subsequently imported. Under the presumption—furnished by the constitution of the United States—that all are free, few or no exceptions could now be proved.

In North Carolina no general law at all was passed, prior to the revolution, declaring who might be slaves,—(See Iredell's statutes, revised by Martin.)

In South Carolinia, the only statutes, prior to the revolution, that attempted to designate the slaves, was passed in 1740—after slavery had for a long time existed. And even this statute, in reality, defined nothing; for the whole purport of it was, to declare that all negroes, Indians, mulattoes and mestizoes, *except those who were then free*, should be slaves. Inasmuch as no prior statute had ever been passed, declaring who should be slaves, *all were legally free;* and therefore all came within the exception in favor of free persons. *

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* The following is the preamble and the important enacting clause of this statute of 1740:

"Whereas, in his majesty's plantations in America, slavery has been introduced and allowed; and the people commonly called negroes, Indians, mulattos and mestizoes have (been) deemed absolute slaves, and the subjects of property in the hands of particular persons; the extent of whose power over such slaves ought to be settled and limited by positive laws, so that the slaves may be kept in due subjection and obedience, and the owners and other persons having the care and government of slaves, may be restrained from exercising too great vigor and cruelty over them; and that the public peace and order of this province may be preserved: *Be it enacted*, That all negroes, Indians, (*free* Indians in amity with this government, and negroes, mulattos and mestizoes, *who are now free, excepted,*) mulattos and mestizoes, who

The same law, in nearly the same words, was passed in Georgia, in 1770.

These were the only general statutes, under which slaves were held in those four States, (Virginia, North Carolina, South Carolina and Georgia,) at the time of the revolution. They would all, for the reasons given, have amounted to nothing, as a foundation for the slavery now existing in those states, even if they had not been specially prohibited by their charters.

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now are or shall hereafter be in this province, and all their issue and offspring born or to be born, shall be and they are hereby declared to be and remain forever hereafter absolute slaves, and shall follow the condition of the mother," &c.—*Grimke, p.* 163–4. *Brevard, vol. 2, p.* 229.

CHAPTER V.

THE DECLARATION OF INDEPENDENCE.

ADMITTING, for the sake of the argument, that prior to the revolution, slavery had a constitutional existence, (so far as it is possible that crime can have such an existence,) was it not abolished by the declaration of independence?

The Declaration was certainly the constitutional law of this country for certain purposes. For example, it absolved the people from their allegiance to the English crown. It would have been so declared by the judicial tribunals of this country, if an American, during the revolutionary war or since, had been tried for treason to the crown. If, then, the declaration were the constitutional law of the country for that purpose, was it not also constitutional law for the purpose of recognizing and establishing, as law, the natural and inalienable right of individuals to life, liberty and the pursuit of happiness? The lawfulness of the act of absolving themselves from their allegiance to the crown, was avowed by the people of the country—and that too in the same instrument that declared the absolution—to rest entirely upon, and to be only a consequence of the natural right of all men to life, liberty and the pursuit of happiness. If, then, the act of absolution was lawful, does it not necessarily follow that the principles that legalized the act, were also law? And if the country ratified the act of absolution, did they not also necessarily ratify and acknowledge the principles which they declared legalized the act?

It is sufficient for our purpose, if it be admitted that this principle was the law of the country at that particular time,

(1776)—even though it had continued to be the law only for a year, or even a day. For if it were the law of the country even for a day, it freed every slave in the country—(if there were, as we say there were not, any legal slaves then in the country.) And the burden would then be upon the slaveholder to show that slavery had *since* been *constitutionally* established. And to show this, he must show an express *constitutional* designation of the particular individuals, who have since been made slaves. Without such particular designation of the individuals to be made slaves, (and not even the present constitutions of the slave States make any such designation,) all constitutional provisions, purporting to authorize slavery, are indefinite, and uncertain in their application, and for that reason void.

But again. The people of this country—in the very instrument by which they first announced their independent political existence, and first asserted their right to establish governments of their own—declared that the natural and inalienable right of all men to life, liberty and the pursuit of happiness, was a *"self-evident truth."*

Now, all *"self-evident truths,"* except such as may be explicitly, or by necessary implication, denied, (and no government has a right to deny any of them,) enter into, are taken for granted by, and constitute an essential part of all constitutions, compacts and systems of government whatsoever.—Otherwise it would be impossible for any systematic government to be established; for it must obviously be impossible to make an actual enumeration of all the "self-evident truths," that are to be taken into account in the administration of such a government. This is more especially true of governments founded, like ours, upon contract. It is clearly impossible, in a contract of government, to enumerate all the "self-evident truths" which must be acted upon in the administration of law. And therefore they are *all* taken for granted, unless particular ones be plainly denied.

This principle, that all "self-evident truths," though not

enumerated, make a part of all laws and contracts, unless clearly denied, is not only indispensable to the very existence of civil society, but it is even indispensable to the administration of justice in every individual case or suit, that may arise, out of contract or otherwise, between individuals. It would be impossible for individuals to make contracts at all, if it were necessary for them to enumerate all the "self-evident truths," that might have a bearing upon their construction before a judicial tribunal. All such truths are therefore taken for granted. And it is the same in all compacts of government, unless particular truths are plainly denied. And governments, no more than individuals, have a right to deny them in any case. To deny, in any case, that "self-evident truths" are a part of the law, is equivalent to asserting that "self-evident falsehood" is law.

If, then, it be a "self-evident truth," that all men have a natural and inalienable right to life, liberty and the pursuit of happiness, *that truth* constitutes a part of all our laws and all our constitutions, unless it have been unequivocally and authoritatively denied.

It will hereafter be shown that this "self-evident truth" has *never been denied* by the people of this country, in their fundamental constitution, or in any other explicit or authoritative manner. On the contrary, it has been reiterated, by them, annually, daily and hourly, for the last sixty-nine years, in almost every possible way, and in the most solemn possible manner. On the 4th of July, '76, they collectively asserted it, as their justification and authority for an act the most momentous and responsible of any in the history of the country. And this assertion has never been retracted by us, as a people. We have virtually re-asserted the same truth in nearly every state constitution since adopted. We have virtually re-asserted it in the national constitution. It is a truth that lives on the tongues and in the hearts of all. It is true we have, in our practice, been so unjust as to withhold the benefits of this truth from a certain class of our fellow men.—

But, even in this respect, this truth has but shared the common fate of other truths. They are generally allowed but a partial application. Still, this truth itself, *as a truth*, has never been denied by us, *as a people*, in any authentic form, or otherwise than impliedly by our practice in particular cases. If it have, say when and where. If it have not, it is still law; and courts are bound to administer it, as law, impartially to all.

Our courts would want no other authority than this truth, thus acknowledged, for setting at liberty any individual, other than one having negro blood, whom our governments, state or national, should assume to authorize another individual to enslave. Why, then, do they not apply the same law in behalf of the African? Certainly not because it is not as much the law of his case, as of others. *But it is simply because they will not.* It is because the courts are parties to an understanding, prevailing among the white race, but expressed in no authentic constitutional form, that the negro may be deprived of his rights at the pleasure of avarice and power. And they carry out this unexpressed understanding in defiance of, and suffer it to prevail over, all our constitutional principles of government—all our authentic, avowed, open and fundamental law.

CHAPTER VI.

THE STATE CONSTITUTIONS OF 1789.

Of all the state constitutions, that were in force at the adoption of the constitution of the United States, in 1789, *not one of them established, or recognized slavery.*

All those parts of the state constitutions, (i. e. of the old thirteen states,) that recognize and attempt to sanction slavery, *have been inserted, by amendments, since the adoption of the constitution of the United States.*

All the states, except Rhode-Island and Connecticut, formed constitutions prior to 1789. Those two states went on, beyond this period, under their old charters.*

The eleven constitutions formed, were all democratic in their general character. The most of them eminently so. They generally recognized, in some form or other, the natural rights of men, as one of the fundamental principles of the government. Several of them asserted these rights in the most emphatic and authoritative manner. Most or all of them had also specific provisions incompatible with slavery. Not one of them had any specific recognition of the existence of slavery. Not one of them granted any specific authority for its continuance.

The only provisions or words in any of them, that could be

* The State Constitutions of 1789 were adopted as follows: Georgia, 1777; South Carolina, 1778; North Carolina, 1776; Virginia, 1776; Maryland, 1776; Delaware, 1776; Pennsylvania, 1776; New Jersey, 1776; New York, 1777; Massachusetts, 1780; New Hampshire, 1783.

These early Constitutions ought to be collected and published with appropriate notes.

claimed by any body as recognitions of slavery, are the following, viz.

1. The use of the words "our negroes" in the preamble to the constitution of Virginia.

2. The mention of "slaves" in the preamble to the constitution of Pennsylvania.

3. The provisions, in some of the constitutions, for continuing in force the laws that had previously been "in force" in the colonies, except when altered by, or incompatible with the new constitution.

4. The use, in several of the constitutions, of the words "free" and "freemen."

As each of these terms and clauses may be claimed by some persons as recognitions of slavery, they are worthy of particular notice.

1. The preamble to the frame of government of the constitution of Virginia speaks of negroes in this connexion, to wit: It charges George the Third, among other things, with "prompting *our negroes* to rise in arms among us, those very negroes, whom, by an inhuman use of his negative, he hath refused us permission to exclude by law."

Here is no assertion that these "negroes" were slaves; but only that they were a class of people whom the Virginians did not wish to have in the state, *in any capacity*—whom they wished "to exclude by law." The language, considered as legal language, no more implies that they were slaves, than the charge of having prompted "our women, children, farmers, mechanics, or our people with red hair, or our people with blue eyes, or our Dutchmen, or our Irishmen to rise in arms among us," would have implied that those portions of the people of Virginia were slaves. And especially when it is considered that slavery had had no prior *legal* existence, this reference to "negroes" authorizes no legal inference whatever in regard to slavery.

The rest of the Virginia constitution is eminently democratic. The bill of rights declares "that all men are by nature equally free and independent, and have certain inher-

ent rights," * * "namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

2. The preamble to the Pennsylvania constitution used the word "slaves" in this connexion. It recited that the king of Great Britain had employed against the inhabitants of that commonwealth, "foreign mercenaries, savages and slaves."

This is no acknowledgment that they themselves had any slaves of their own; much less that they were going to continue their slavery; for the constitution contained provisions plainly incompatible with that. Such, for instance, is the following: which constitutes the first article of the "Declaration of Rights of the Inhabitants," (i. e. of *all* the inhabitants) "of the state of Pennsylvania."

"1. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."

The 46th section of the frame of government is in these words.

"The Declaration of Rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any pretence whatever."

Slavery was clearly impossible under these two constitutional provisions, to say nothing of others.

2. Several of the constitutions provide that all the laws of the colonies, previously "*in force*," should continue in force until repealed, *unless repugnant to some of the principles of the constitutions themselves.*

Maryland, New-York, New-Jersey, South Carolina, and perhaps one or two others had provisions of this character. *North Carolina had none, Georgia none, Virginia none.* The slave laws of these three latter states, then, necessarily fell to the ground on this change of government.

Maryland, New-York, New-Jersey and South-Carolina had

acts upon their statute books, *assuming* the existence of slavery, and pretending to legislate in regard to it; and it may perhaps be argued that those laws were continued in force under the provision referred to. But those acts do not come within the above description of "laws in force"—and for this reason, viz. the acts were originally unconstitutional and void, as being against the charters, under which they were passed; and therefore never had been *legally* "in force," however they might have been actually carried into execution as a matter of might, or of pretended law, by the white race.

This objection applies to the slave acts of all the colonies. None of them could be continued under this provision.—None of them, legally speaking, were "laws in force."

But in particular states there were still other reasons against the colonial slave acts being valid under the new constitutions. For instance. South Carolina had no statute (as has before been mentioned,) that designated her slaves with such particularity as to distinguish them from free persons; and for that reason none of her slave statutes were *legally* "in force."

New-Jersey also was in the same situation. She had slave statutes; but none designating the slaves so as to distinguish them from the rest of her population. She had also one or more specific provisions in her constitution incompatible with slavery, to wit: "That the common law of England * * * * * *shall remain in force*, until altered by a future law of the legislature; such parts only as are repugnant to the rights and privileges contained in this charter." (Sec. 22.)

Maryland had also, in her new constitution, a specific provision incompatible with the acts on her colonial statute book in regard to slavery, to wit:

"Sec. 3. That the *inhabitants*"—mark the word, for it includes *all* the inhabitants—"that the *inhabitants* of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law,"&c.

This guaranty, of "the common law of England" to *all* "the inhabitants of Maryland," without discrimination, is incompatible with any slave acts that existed on the statute book; and the latter would therefore have become void under the constitution, even if they had not been previously void under the colonial charter.

4. Several of these state constitutions have used the words "free" and "freemen."

For instance. That of South Carolina provided, (Sec. 13,) that the electors of that state should be "*free* white men." That of Georgia (Art. 11,) and that of North Carolina (Art. 40,) use the term "free citizen." That of Pennsylvania (Sec. 42,) has the term "free denizen."

These four instances are the only ones I have found in all the eleven constitutions, where any class of persons are designated by the term "free." And it will be seen hereafter, from the connexion and manner in which the word is used, in these four cases, that it implies no recognition of slavery.

Several of the constitutions, to wit, those of Georgia, South Carolina, North Carolina, Maryland, Delaware, Pennsylvania, New-York—but not Virginia, New-Jersey, Massachusetts or New-Hampshire—repeatedly use the word "freeman" or "freemen," when describing the electors, or other members of the state.

The only questions that can arise from the use of these words "free" and "freeman," are these, viz: Are they used as the correlatives, or opposites of slaves? Or are they used in that political sense, in which they are used in the common law of England, and in which they had been used in the colonial charters, viz., to describe those persons possessed of the privilege of citizenship, or some corporate franchise, as distinguished from aliens, and those not enjoying franchises, although free from personal slavery?

If it be answered, that they are used in the sense first

mentioned, to wit, as the correlatives or opposites of slavery—then it would be argued that they involved a recognition, at least, of the existence of slavery.

But this argument—whatever it might be worth to support an implied admission of the *actual* existence of slavery—would be entirely insufficient to support an implied admission either of its *legal*, or its *continued* existence. Slavery is so entirely contrary to natural right; so entirely destitute of authority from natural law; so palpably inconsistent with all the legitimate objects of government, that nothing but express and explicit provision can be recognized, in law, as giving it any sanction. No hints, insinuations, or unnecessary implications can give any ground for so glaring a departure from, and violation of all the other, the general, and the legitimate principles of the government. If, then, it were admitted that the words "free" and "freemen" were used as the correlatives of slaves, still, of themselves, the words would give no direct or sufficient authority for laws establishing or continuing slavery. To call one man free, gives no legal authority for making another man a slave. And if, as in the case of these constitutions, no express authority for slavery were given, slavery would be as much unconstitutional as though these words had not been used. The use of these words in that sense, in a constitution, under which all persons are presumed to be free, would involve no absurdity, although it might be gratuitous and unnecessary.

It is a rule of law, in the construction of all statutes, contracts and legal instruments whatsoever—*that is, those which courts design, not to invalidate, but to enforce*—that where words are susceptible of two meanings, one consistent, and the other inconsistent, with liberty, justice and right, that sense is always to be adopted, which is consistent with right, unless there be something in other parts of the instrument sufficient to prove that the other is the true meaning. In the case of no one of all these early state constitutions, is there any thing in the other parts of them, to show that these

words "free" and "freemen" are used as the correlatives of slavery. The rule of law, therefore, is imperative that they must be regarded in the sense consistent with liberty and right.

If this rule, that requires courts to give an innocent construction to all words that are susceptible of it, were not imperative, courts might, at their own pleasure, pervert the honest meaning of the most honest statutes and contracts, into something dishonest, for there are almost always words used in the most honest legislation, and in the most honest contracts, that, by implication or otherwise, are capable of conveying more than one meaning, and even a dishonest meaning. If courts *could* lawfully depart from the rule, that requires them to attribute an honest meaning to all language that is susceptible of such a meaning, it would be nearly impossible to frame either a statute or a contract, which the judiciary might not *lawfully* pervert to some purpose of injustice. There would obviously be no security for the honest administration of any honest law or contract whatsoever.

This rule applies as well to constitutions as to contracts and statutes; for constitutions are but contracts between the people, whereby they grant authority to, and establish law for the government.

What other meaning, then, than as correlatives of slavery, are the words "free" and "freemen" susceptible of, as they are used in the early state constitutions?

Among the definitions given by Noah Webster are these:

"*Freeman.* One who enjoys, or is entitled to a franchise or peculiar privilege; as the freemen of a city or state."

"*Free.* Invested with franchises; enjoying certain immunities; with *of*—as a man *free of* the city of London."

"Possessing without vassalage, or slavish conditions; as a man *free of* his fam—"

In England, and in the English law throughout, as it existed before and since the emigration of our ancestors to this country, the words "free" and "freemen" were politi-

cal terms in the most common use; and employed to designate persons enjoying some franchise or privilege, from the most important one of general citizenship in the nation, to the most insignificant one in any incorporated city, town or company. For instance: A man was said to be a "free British subject"—meaning thereby that he was a naturalized or native born citizen of the British government, as distinguished from an alien, or person neither naturalized nor native born.

Again. A man was said to be "free of a particular trade in the city of London"—meaning thereby, that by the bye-laws of the city of London, he was permitted to follow that trade—a privilege which others could not have without having served an apprenticeship in the city, or having purchased the privilege of the city government.

The terms "free" and "freemen" were used with reference to a great variety of privileges, which, in England, were granted to one man, and not to another. Thus members of incorporated companies were called "*freemen* of the company," or "*free* members of the company;" and were said to be "*free* of the said company." The citizens of an incorporated city were called "the freemen of the city," as "freemen of the city of London."

In Jacob's Law Dictionary the following definitions, among others, are given of the word "freemen."

"*Freeman—liber homo.*" * * "In the distinction of a freeman from a vassal under the feudal policy, *liber homo* was commonly opposed to *vassus*, or *vassalus;* the former denoting an *allodial* proprietor; the latter one who held of a superior."

"The title of a *freeman* is also given to any one admitted to the freedom of a corporate town, or of any other corporate body, consisting, among other members, of those called *freemen.*"

"There are three ways to be a *freeman* of London; by servitude of an apprenticeship; by birthright, as being the

son of a *freeman;* and by redemption, i. e. by purchase, under an order of the court of aldermen."

"The customs of the city of London shall be tried by the certificate of the Mayor and Aldermen, * * * as the custom of distributing the effects of freemen deceased: of enrolling apprentices, or that he who is *free of one trade* may use another."

"Elections of aldermen and common-councilmen are to be by *freemen* householders."

"An agreement on marriage, that the husband shall take up the freedom of London, binds the distribution of the effects."

The foregoing and other illustrations of the use of the words "free" and "freemen," may be found in Jacob's Law Dictionary, under the head of Freeman, London, &c.

And this use of these words has been common in the English laws for centuries. The term "freeman" is used in Magna Charta, (1215). The English statutes abound with the terms, in reference to almost every franchise or peculiar privilege, from the highest to the lowest, known to the English laws. It would be perfectly proper, and in consonance with the legal meaning and common understanding of the term, to say of Victoria, that "she is free of the throne of England," and of a cobbler, that he "is free of his trade in the city of London."

But the more common and important signification of the words is to designate the *citizens*, native or naturalized, and those specially entitled, as a matter of political and acknowledged right, to participate in, or be protected by the government, as distinguished from aliens, or persons attainted, or deprived of their political privileges as members of the state. Thus they use the term "free British subject"—"freeman of the realm," &c. In short, the terms, when used in political papers, have a meaning very nearly, if not entirely synonymous, with that which we, in this country, now give to the word *citizen.*

But throughout the English law, and among all the variety of ways, in which the words "free" and "freemen" are used, as *legal* terms, they are *never used as the correlatives, or opposites of slaves or slavery*—and for the reason that they have in England no such persons or institutions, known to their laws, as slaves or slavery. The use of the words "free" and "freemen," therefore, do not in England at all imply the existence of slaves or slavery.

This use of the words "free" and "freemen," which is common to the English law, was introduced into this country at its first settlement, in all, or very nearly all the colonial charters, patents, &c. and continued in use, in this sense, until the time of the revolution; and, of course, until the adoption of the first state constitutions.*

The persons and companies, to whom the colonial charters were granted, and those who were afterwards to be admitted as their associates, were described as "freemen of said colony," "freemen of said province," "freeman of said company," "freemen of the said company and body politick," &c. (See charter of Rhode Island.)

Many, if not all the charters had a provision similar in substance to the following in the charter to Rhode Island, viz:

"That all and every the subjects of us, our heirs and successors," (i. e. of the king of England granting the charter,) "which are already planted and settled within our said colony of Providence Plantations, or which shall hereafter go to inhabit within the said colony, and all and every of their children which have been born there, or which shall happen hereafter to be born there, or on the sea going thither, or returning from thence, shall have and enjoy all liberties and immunities of *free* and natural subjects, within any of the dominions of us, our heirs and successors, to all intents, con-

* Since that time the words "free" and "freemen" have been gradually falling into disuse, and the word citizen been substituted—doubtless for the reason that it is not pleasant to our pride or our humanity to use words, one of whose significations serves to suggest a contrast between ourselves and slaves.

structions and purposes whatsoever, as if they and every of them were born within the realm of England."

The following enactment of William Penn, as proprietary and Governor of the Province of Pennsylvania and its territories, illustrates one of the common uses of the word "freeman," as known to the English law, and as used in this country prior to the revolution—that is, as distinguishing a native born citizen, and one capable of holding real estate, &c. from a foreigner, *not naturalized*, and on that account subject to certain disabilities, such as being incompetent to hold real estate.

"And forasmuch as it is apparent that the just encouragement of the inhabitants of the province, and territories thereunto belonging, is likely to be an effectual way for the improvement thereof; and since some of the people that live therein and are likely to come thereunto, *are foreigners, and so not freemen, according to the acceptation of the laws of England, the consequences of which may prove very detrimental to them in their estates and traffic*, and so injurious to the prosperity of this province and territories thereof. *Be it enacted*, by the proprietary and governor of the province and counties aforesaid, by and with the advice and consent of the deputies of the *freemen* thereof, in assembly met, *That all persons who are strangers and foreigners*, that do now inhabit this province and counties aforesaid, *that hold land in fee in the same, according to the law of a freeman*, and who shall solemnly promise, within three months after the publication thereof, in their respective county courts where they live, upon record, faith and allegiance to the king of England and his heirs and successors, and fidelity and lawful obedience to the said William Penn, proprietary and governor of the said province and territories, and his heirs and assigns, according to the king's letters, patents and deed aforesaid, *shall be held and reputed freemen of the province and counties aforesaid, in as ample and full a manner as any person residing therein.* And it is hereby further enacted, by the authority aforesaid, That when at any time any person, that is a foreigner, shall make his request to the proprietary and governor of this province and territories thereof, *for the*

aforesaid freedom, the said person shall be admitted on the conditions herein expressed, paying at his admission twenty shillings sterling, and no more, any thing in this law, or any other law, act or thing in this province, to the contrary in any wise notwithstanding."

"Given at Chester," &c., "under the hand and broad seal of William Penn, proprietary and governor of this province and territories thereunto belonging, in the second year of his government, by the king's authority. W. PENN." *

Up to the time of our revolution, the *only* meaning which the words "free" and "freemen" had, in the English law, *in the charters granted to the colonies*, and in the important documents of a political character, when used to designate one person as distinguished from another, was to designate a person enjoying some franchise or privilege, as distinguished from aliens or persons not enjoying a similar franchise. They were never used to designate a free person as distinguished from a slave—for the very sufficient reason that all these *fundamental* laws presumed that there were no slaves.

Was such the meaning of the words "free" and freemen," as used in the constitutions adopted prior to 1789, in the States of Georgia, North and South Carolina, Maryland, Delaware and New York?

The legal rule of interpretation before mentioned, viz: that an innocent meaning must be given to all words that are susceptible of it—would compel us to give the words this meaning, instead of a meaning merely correlative with slavery, even if we had no other ground than the rule alone, for so doing. But we have other grounds. For instance:—Several of these constitutions have themselves explicitly given to the words this meaning. While not one of them have given them a meaning correlative with slaves, inasmuch as none of them purport either to establish, authorize, or even to know of the existence of slavery.

* Dallas's edition of the Laws of Pennsylvania, vol. 1, Appendix, page 25.

The constitution of Georgia (adopted in 1777) evidently uses the word "free" in this sense, in the following article:

"Art. 11. No person shall be entitled to more than one vote, which shall be given in the county where such person resides, except as before excepted; *nor shall any person who holds any title of nobility, be entitled to a vote, or be capable of serving as a representative, or hold any post of honor, profit, or trust, in this State, while such person claims his title of nobility; but if the person shall give up such distinction,* in the manner as may be directed by any future legislature, *then, and in such case,* he shall be entitled to a *vote, and represent,* as before directed, and enjoy all the other benefits of a FREE citizen."

The constitution of North Carolina, (adopted in 1776), used the word in a similar sense, as follows:

"40. That every *foreigner*, who comes to settle in this State, having first taken an oath of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land, or other real estate, *and after one year's residence* be deemed a FREE citizen."

This constitution also repeatedly uses the word "freeman;" meaning thereby "a free citizen," as thus defined.

The constitution of Pennsylvania, (adopted in 1776,) uses the word in the same sense:

"Sec. 42. Every *foreigner*, of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold and transfer land or other real estate; *and after one year's residence, shall be deemed a* FREE *denizen thereof,* and entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected a representative until after two year's residence."

The constitution of New York, (adopted in 1777,) uses the word in the same manner:

"Sec. 6. That every male inhabitant of full age, who has personally resided in one of the counties of this state for six months, immediately preceding the day of election, shall at such election be entitled to vote for representatives of the said county in assembly, if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State. *Provided always*, That every person who now is a *freeman of the city of Albany, or who was made a freeman of the city of New York*, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his place of residence."

The constitution of South Carolina, (formed in 1778,) uses the word "free" in a sense which may, at first thought, be supposed to be different from that in which it is used in the preceding cases:

Sec. 13. The qualification of electors shall be that "every *free white man*, and no other person," &c., "shall be deemed a person qualified to vote for, and shall be capable of being elected a representative."

It may be supposed that here the word "free" is used as the correlative of slavery; that it presumes the "whites" to be "free;" and that it therefore implies that other persons than "white" may be slaves. Not so. No other parts of the constitution authorize such an inference; and the implication from the words themselves clearly is, that *some* "white" persons might not be "free." The distinction implied is between those "white" persons that were "free," and those that were not "free." If this were not the distinction intended, and if *all* "white" persons were "free," it would have been sufficient to have designated the electors simply as "white" persons, instead of designating them as both "free" and "white." If therefore it were admitted that the word

"free," in this instance, were used as the correlative of slaves, the implication would be that *some* "white" persons were, or might be slaves. There is therefore no alternative but to give to the word "free," in this instance, the same meaning that it has in the constitutions of Georgia, North Carolina and Pennsylvania.

In 1704 South Carolina passed an act entitled, "*An act for making aliens* FREE *of this part of the Province.*"— This statute remained in force until 1784, when it was repealed by an act entitled "*An act to confer the right of citizenship on aliens.*" *

One more example of this use of the word "*freeman.*" The constitution of Connecticut, adopted as late as 1818, has this provision:

"Art. 6. Sec. 1. All persons who have been, *or shall hereafter*, previous to the ratification of this constitution, *be admitted freemen*, according to the existing laws of this State, shall be electors."

Surely no other proof can be necessary of the meaning of the words "free" and "freeman," as used in the constitutions existing in 1789; or that the use of those words furnish no implication in support of either the exisitence, or the constitutionality of slavery, prior to the adoption of the constitution of the United States in that year.

I have found, in *none* of the State constitutions before mentioned, (existing in 1789,) any other evidence or intimation of the existence of slavery, than that already commented upon and refuted. And if there be no other, then it is clear that slavery had no legal existence under them. And there was consequently no *constitutional* slavery in the country up to the adoption of the constitution of the United States.

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* Cooper's edition of the Laws of South Carolina, vols. 2 and 4. "Aliens,"

CHAPTER VII.

THE ARTICLES OF CONFEDERATION.

THE Articles of Confederation, (formed in 1778,) contained no recognition of slavery. The only words in them, that could be claimed by any body as recognizing slavery, are the following, in Art. 4, Sec. 1.

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, *the free inhabitants* of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all the privileges and immunities of *free citizens* in the several States; and *the people* of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively."

There are several reasons why this provision contains no legal recognition of slavery.

1. The true meaning of the word "free," as used in the English law, in the colonial charters, and in the State constitutions up to this time, when applied to persons, was to describe citizens, or persons possessed of franchises, as distinguished from aliens or persons not possessed of the same franchises. Usage, then, would give this meaning to the word "free" in this section.

2. The rules of law require that an innocent meaning should be given to all words that will bear an innocent meaning.

3. The Confederation was a league between states in their corporate capacity; and not, like the constitution, a govern-

ment established by the people in their individual character. The confederation, then, being a league between states or corporations, as such, of course recognized nothing in the character of the state governments except what their corporate charters or state constitutions authorized. And as none of the state constitutions of the day recognized slavery, the confederation of the state governments could not of course recognize it. Certainly none of its language can, consistently with legal rules, have such a meaning given to it, when it is susceptible of another that perfectly accords with the sense in which it is used in the constitutions of the states, that were parties to the league.

4. No other meaning can be given to the word "free" in this case, without making the sentence an absurd, or, at least, a foolish and inconsistent one. For instance,—The word "free" is joined to the word "citizen." What reason could there be in applying the term "free" to the word "citizen," if the word "free" were used as the correlative of slavery? Such an use of the word would imply that *some* of the "citizens" were, or might be slaves—which would be an absurdity. But used in the other sense, it implies only that some citizens had franchises not enjoyed by others; such, perhaps, as the right of suffrage, and the right of being elected to office; which franchises were only enjoyed by a part of the "citizens." All who were born of English parents, for instance, were "citizens," and entitled to the protection of the government, and freedom of trade and occupation, &c., &c., and in these respects were distinguished from aliens.—Yet a property qualification was necessary, in some, if not all the States, to entitle even such to the franchises of suffrage, and of eligibility to office.

The terms "free inhabitants" and "people" were probably used as synonymous either with "free citizens," or with "citizens" not "free"—that is, not possessing the franchises of suffrage and eligibility to office.

Mr. Madison, in the 42d No. of the Federalist, in com-

menting upon the power given to the general government by the new constitution, of naturalizing aliens, refers to this clause in the Articles of Confederation; and takes it for granted that the word "free" was used in that political sense, in which I have supposed it to be used—that is, as distinguishing "citizens" and the "inhabitants" or "people" proper, from aliens and persons not allowed the franchises enjoyed by the "inhabitants" and "people" of the States.—Even the privilege of residence he assumes to be a franchise entitling one to the denomination of "free."

He says: "The dissimiliarity in the rules of naturalization," (i. e. in the rules established by the separate states, for under the confederation each state established its own rules of naturalization,) "has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of confederation, it is declared, 'that the *free inhabitants* of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of *free citizens* in the several states; and *the people* of each state shall, in every other, enjoy all the privileges of trade and commerce,' &c. There is a confusion of language here, which is remarkable. Why the terms *free inhabitants* are used in one part of the article, *free citizens* in another, and *people* in another; or what was meant by superadding to 'all privileges and immunities of free citizens,' 'all the privileges of trade and commerce,' cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of *free inhabitants* of a state, although not citizens of such state, are entitled, in every other state, to all the privileges of *free citizens* of the latter; that is, to greater privileges than they may be entitled to in their own state; so that it may be in the power of a particular state, or rather every state is laid under the necessity, not only to confer the rights of citizenship in other states upon any whom it may admit to such rights within itelf, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term 'inhabitant' to be admitted, which would confine the stipulated privileges to citizens alone, the difficulty is diminished

only, not removed. The very improper power would still be retained by each state, of naturalizing aliens in every other state. In one state, residence for a short time confers all the rights of citizenship; in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity, and thus the law of one state be preposterously rendered paramount to the laws of another, within the jurisdiction of the other.

"We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several states, certain description of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent, not only with the rights of citizenship, but with the privileges of residence. What would have been the consequence, if such persons, by residence, or otherwise, had acquired the character of citizens under the laws of another state, and then asserted their rights as such, both to residence and citizenship, within the state proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature, not to be provided against. The new constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the confederation on this head, by authorizing the general government to establish an uniform rule of naturalization throughout the United States."

Throughout this whole quotation Mr. Madison obviously takes it for granted that the word "free" is used in the articles of confederation, as the correlative of aliens.—And in this respect he no doubt correctly represents the meaning then given to the word by the people of the United States. And in the closing sentence of the quotation, he virtually asserts that such is the meaning of the word "free" in "the new constitution."

CHAPTER VIII.

THE CONSTITUTION OF THE UNITED STATES.

We come now to the period commencing with the adoption of the constitution of the United States.

We have already seen that slavery had not been authorized or established by any of the fundamental constitutions or charters that had existed previous to this time; that it had always been a mere abuse sustained by the common consent of the strongest party, in defiance of the avowed constitutional principles of their governments. And the question now is, whether it was constitutionally established, authorized or sanctioned by the constitution of the United States?

It is perfectly clear, in the first place, that the constitution of the United States did not, *of itself, create or establish* slavery as a *new* institution; or even give any authority to the state governments to establish it as a new institution.—The greatest sticklers for slavery do not claim this. The most they claim is, that it recognized it as an institution already legally existing, under the authority of the state governments; and that it virtually guarantied to the states the right of continuing it in existence during their pleasure. And this is really the only question arising out of the constitution of the United States on this subject, viz: whether it *did* thus recognize and sanction slavery as an *existing* institution?

This question is, in reality, answered in the negative by what has already been shown; for if slavery had no constitutional existence, under the state constitutions, prior to the adoption of the constitution of the United States, then it is

absolutely certain that the constitution of the United States did *not* recognize it as a constitutional institution; for it cannot, of course, be pretended that the United States constitution recognized, as constitutional, any state institution that did not constitutionally exist.

Even if the constitution of the United States had *intended* to recognize slavery, as a constitutional *state* institution, such intended recognition would have failed of effect, and been legally void, because slavery then had no constitutional existence to be recognized.

Suppose, for an illustration of this principle, that the constitution of the United States had, by implication, plainly taken it for granted that the state legislatures had power—derived from the *state* constitutions—to order arbitrarily that infant children, or that men without the charge of crime, should be maimed—deprived, for instance, of a hand, a foot, or an eye. This intended recognition, on the part of the constitution of the United States, of the legality of such a practice, would obviously have failed of all legal effect—would have been mere surplussage—if it should appear, from an examination of the state constitutions themselves, that they had really conferred no such power upon the legislatures. And this principle applies with the same force to laws that would arbitrarily make men or children slaves, as to laws that should arbitrarily order them to be maimed or murdered.

We might here safely rest the whole question—for no one, as has already been said, pretends that the constitution of the United States, by its own authority, created or authorized slavery as a new institution; but only that it intended to recognize it as one already established by authority of the state constitutions. This intended recognition—if there were any such—being founded on an error as to what the state constitutions really did authorize, necessarily falls to the ground, a defunct intention.

We make a stand, then, at this point, and insist that the main question—the only material question—is already de-

cided against slavery; and that it is of no consequence what recognition or sanction the constitution of the United States may have intended to extend to it.

The constitution of the United States, at its adoption, certainly took effect upon, and made citizens of *all* "the people of the United States," who were *not slaves* under the state constitutions. No one can deny a proposition so self-evident as that. If, then, the *State* constitutions, then existing, authorized no slavery at all, the constitution of the United States took effect upon, and made citizens of *all* "the people of the United States," without discrimination. And if *all* "the people of the United States" were made citizens of the United States, by the United States constitution, at its adoption, it was then forever too late for the *state* governments to reduce any of them to slavery. They were thenceforth citizens of a higher government, under a constitution that was "the supreme law of the land," "any thing in the constitution or laws of the states to the contrary notwithstanding." If the state governments could enslave citizens of the United States, the state constitutions, and not the constitution of the United States, would be the "supreme law of the land"—for no higher act of supremacy could be exercised by one government over another, than that of taking the citizens of the latter out of the protection of their government, and reducing them to slavery.

SECONDLY.

Although we might stop—we yet do not choose to stop—at the point last suggested. We will now go further, and attempt to show, specifically from its provisions, that the constitution of the United States, not only does not recognize or sanction slavery, as a legal institution, but that, on the contrary, it presumes all men to be free; that it positively denies the right of property in man; and that it, *of itself*, makes it

impossible for slavery to have a legal existence in *any* of the United States.

In the first place—although the assertion is constantly made, and rarely denied, yet it is palpably a mere begging of the whole question in favor of slavery, to say that the constitution *intended* to sanction it; for if it *intended* to sanction it, it *did* thereby necessarily sanction it, (that is, if slavery then had any constitutional existence to be sanctioned.) The *intentions* of the constitution are the only means whereby it sanctions any thing. And its intentions necessarily sanction everything to which they apply, and which, in the nature of things, they are competent to sanction. To say, therefore, that the constitution *intended* to sanction slavery, is the same as to say that it *did* sanction it; which is begging the whole question, and substituting mere assertion for proof.

Why, then, do not men say distinctly, that the constitution *did* sanction slavery, instead of saying that it *intended* to sanction it? We are not accustomed to use the word "*intention*," when speaking of the other grants and sanctions of the constitution. We do not say, for example, that the constitution *intended* to authorize congress "to coin money," but that it *did* authorize them to coin it. Nor do we say that it intended to authorize them "to declare war;" but that it did authorize them to declare it. It would be silly and childish to say merely that it *intended* to authorize them "to coin money," and "to declare war," when the language authorizing them to do so, is full, explicit and positive. Why, then, in the case of slavery, do men say merely that the constitution *intended* to sanction it, instead of saying distinctly, as we do in the other cases, that it *did* sanction it? The reason is obvious. If they were to say unequivocally that it *did* sanction it, they would lay themselves under the necessity of pointing to the *words* that sanction it; and they are aware that the *words alone* of the constitution do not come up to that point. They, therefore, assert simply that the constitution *intended* to sanction it; and they then attempt to sup-

port the assertion by quoting certain words and phrases, which they say are *capable* of covering, or rather of concealing such an intention; and then by the aid of exterior, circumstantial and historical evidence, they attempt to enforce upon the mind the conclusion that, as matter of fact, such was the intention of those who *drafted* the constitution; and thence they finally infer that such was the intention of the constitution itself.

The error and fraud of this whole procedure—and it is one purely of error and fraud—consists in this—that it artfully substitutes the supposed intentions of those who drafted the constitution, for the intentions of the constitution itself; and, secondly, it personifies the constitution as a crafty individual; capable of both open and secret intentions; capable of legally participating in, and giving effect to all the subtleties and double dealing of knavish men; and as actually intending to secure slavery, while openly professing to "secure and establish liberty and justice." It personifies the constitution as an individual capable of having private and criminal intentions, which it dare not distinctly avow, but only darkly hint at, by the use of words of an indefinite, uncertain and double meaning, whose application is to be gathered from external circumstances.

The falsehood of all these imaginings is apparent, the moment it is considered that the constitution is not a *person*, of whom an "intention," not legally expressed, can be asserted; that it has none of the various and selfish passions and motives of action, which sometimes prompt *men* to the practice of duplicity and disguise; that it is merely a written legal instrument; that, as such, it must have a fixed, and not a double meaning; that it is made up entirely of intelligible words; and that it has, and *can* have, no soul, no "*intentions*," no motives, no being, no personality, except what those words alone express or imply. Its "intentions" are nothing more nor less than the legal meaning of its words. Its intentions are no guide to its legal meaning—as the advocates of slavery all assume; but its legal meaning is the sole guide to

its intentions. This distinction is all important to be observed; for if we can gratuitously assume the intentions of a legal instrument to be what we may wish them to be, and can then strain or pervert the ordinary meaning of its words, in order to make them utter those intentions, we can make any thing we choose of any legal instrument whatever. The legal meaning of the words of an instrument is, therefore, necessarily our only guide to its intentions.

In ascertaining the legal meaning of the words of the constitution, these rules of law,(the reasons of which will be more fully explained hereafter,) are vital to be borne constantly in mind, viz: 1st, that no intention in violation of natural justice and natural right, (like that to sanction slavery,) can be ascribed to the constitution, unless that intention be expressed in terms that are *legally competent* to express such an intention; and, 2d, that no terms, except those that are plenary, express, explicit, distinct, unequivocal, *and to which no other meaning can be given, are legally competent* to authorize or sanction any thing contrary to natural right. The rule of law is materially different as to the terms necessary to legalize and sanction any thing contrary to natural right, and those necessary to legalize things that are consistent with natural right. The latter may be sanctioned by implication and inference; the former only by inevitable implication, or by language that is full, definite, express, explicit, unequivocal, and whose *unavoidable* import is to sanction the *specific wrong* intended.

To assert, therefore, that the constitution *intended* to sanction slavery, is, in reality, equivalent to asserting that the *necessary* meaning, the *unavoidable* import of the *words alone* of the constitution, come fully up to the point of a clear, definite, distinct, express, explicit, unequivocal, necessary and peremptory sanction of the specific thing, *human slavery, property in man.* If the *necessary* import of its *words alone* do but fall an iota short of this point, the instrument gives, and, legally speaking, intended to give no legal sanc-

tion to slavery. Now, who can, in good faith, say that the *words alone* of the constitution come up to this point? No one, who knows any thing of law, and the meaning of words. Not even the name of the thing, alleged to be sanctioned, is given. The constitution itself contains no designation, description, or necessary admission of the existence of such a thing as slavery, servitude, or the right of property in man. We are obliged to go out of the instrument, and grope among the records of oppression, lawlessness and crime—records unmentioned, and of course unsanctioned by the constitution —to *find* the thing, to which it is said that the words of the constitution apply. And when we have found this thing, which the constitution dare not name, we find that the constitution has sanctioned it, (if at all,) only by enigmatical words, by unnecessary implication and inference, by inuendo and double entendre, and under a name that entirely fails of describing the thing. Every body must admit that the constitution itself contains no language, from which *alone* any court, that were either strangers to the prior existence of slavery, or that did not assume its prior existence to be legal, could legally decide that the constitution sanctioned it. And this is the true test for determining whether the constitution does, or does not, sanction slavery, viz: whether a court of law, strangers to the prior existence of slavery, or not assuming its prior existence to be legal—looking only at the naked language of the instrument—could, consistently with legal rules, judicially determine that it sanctioned slavery. Every lawyer, who at all deserves that name, knows that the claim for slavery could stand no such test. The fact is palpable, that the constitution contains no such legal sanction; that it is only by unnecessary implication and inference, by inuendo and double-entendre, by the aid of exterior evidence, the assumption of the prior legality of slavery, and the gratuitous imputation of criminal intentions that are not avowed in legal terms, that any sanction of slavery, (as a legal institution,) can be extorted from it.

But legal rules of interpretation entirely forbid and disallow all such implications, inferences, inuendos and double-entendre, all aid of exterior evidence, all assumptions of the prior legality of slavery, and all gratuitous imputations of criminal unexpressed intentions; and consequently compel us to come back to the *letter* of the instrument, and find *there* a distinct, clear, necessary, peremptory sanction for slavery, or to surrender the point.

To the unprofessional reader these rules of interpretation will appear stringent, and perhaps unreasonable and unsound. For his benefit, therefore, the reasons on which they are founded, will be given. And he is requested to fix both the reasons and the rules fully in his mind, inasmuch as the whole legal meaning of the constitution, in regard to slavery, may perhaps be found to turn upon the construction which these rules fix upon its language.

But before giving the reasons of this rule, let us offer a few remarks in regard to *legal* rules of interpretation in general. Many persons appear to have the idea that these rules have no foundation in reason, justice or necessity; that they are little else than whimsical and absurd conceits, arbitrarily adopted by the courts. No idea can be more erroneous than this. The rules are absolutely indispensable to the administration of the justice arising out of any class of legal instruments whatever—whether the instruments be simple contracts between man and man, or statutes enacted by legislatures, or fundamental compacts or constitutions of government agreed upon by the people at large. In regard to all these instruments, the *law* fixes, and necessarily must fix their meaning; and for the obvious reason, that otherwise their meaning could not be fixed at all. The parties to the simplest contract may disagree, or pretend to disagree, as to its meaning, and of course as to their respective rights under it. The different members of a legislative body, who vote for a particular statute, may have different intentions in voting for it, and may therefore differ, or pretend to differ, as to its meaning. The

people of a nation may establish a compact of government. The motives of one portion may be to establish liberty, equality and justice; and they may think, or pretend to think that the words used in the instrument convey that idea. The motives of another portion may be to establish the slavery or subordination of one part of the people, and the superiority or arbitrary power of the other part; and they may think, or pretend to think, that the language agreed upon by the whole authorizes such a government. In all these cases, unless there were some rules of law, applicable alike to all instruments, and competent to settle their meaning, their meaning could not be settled; and individuals would of necessity lose their rights under them. *The law, therefore, fixes their meaning;* and the rules by which it does so, are founded in the same justice, reason, necessity and truth, as are other legal principles, and are for that reason as inflexible as any other legal principles whatever. They are also simple, intelligible, natural, obvious. Every body are presumed to know them, as they are presumed to know any other legal principles. No one is allowed to plead ignorance of them, any more than of any other principle of law. All persons and people are presumed to have framed their contracts, statutes and constitutions with reference to them. And if they have not done so—if they have said black when they meant white, and one thing when they meant another, they must abide the consequences. The law will presume that they meant what they said. No one, in a court of justice, can claim any rights founded on a construction different from that which these rules would give to the contract, statute, or constitution, under which he claims. The judiciary cannot depart from these rules, for two reasons. First, because the rules embody in themselves principles of justice, reason and truth; and are therefore as necessarily law as any other principles of justice, reason and truth; and, secondly, because if they could lawfully depart from them in one case, they might in another, at their own caprice. Courts could thus at pleasure become des-

potic; all certainty as to the legal meaning of instruments would be destroyed; and the administration of justice, according to the true meaning of contracts, statutes and constitutions, would be rendered impossible.

What, then, are some of these rules of interpretation?

One of them, (as has been before stated,) is, that where words are susceptible of two meanings, one consistent, and the other inconsistent, with justice and natural right, that meaning, and *only that* meaning, which is consistent with right, shall be attributed to them—unless other parts of the instrument overrule that interpretation.

Another rule, (if indeed it be not the same,) is, that no language, except that which is peremptory, and no implication, except one that is inevitable, shall be held to authorize or sanction any thing contrary to natural right.

Another rule is, that no *extraneous or historical evidence* shall be admitted to fix upon a statute an unjust or immoral meaning, when the words themselves of the act are susceptible of an innocent one.

One of the reasons of these stringent and inflexible rules, doubtless is, that judges have always known that, in point of fact, natural justice was itself law, and that nothing inconsistent with it could be made law, even by the most explicit and peremptory language that legislatures could employ.—But judges have always, in this country and in England, been dependent upon the executive and the legislature for their appointments and salaries, and been amenable to the legislature by impeachment. And as the executive and legislature have always enacted more or less statutes, and had more or less purposes to accomplish, that were inconsistent with natural right, judges have seen that it would be impossible for them to retain their offices, and at the same time maintain the integrity of the law against the will of those in whose power they were. It is natural also that the executive should appoint, and that the legislature should approve the appointment of no one for the office of judge, whose integrity they

should suppose would stand in the way of their purposes.—The consequence has been that all judges, (probably without exception,) though they have not dared deny, have yet in practice yielded the vital principle of law; and have succumbed to the arbitrary mandates of the other departments of the government, so far as to carry out their enactments, though inconsistent with natural right. But, as if sensible of the degradation and criminality of so doing, they have made a stand at the first point at which they could make it, without bringing themselves in a direct collision with those on whom they were dependent. And that point is, that they will administer, as law, no statute, that is contrary to natural right, unless its language be so explicit and peremptory, that there is no way of evading its authority, but by flatly denying the authority of those who enacted it. They (the court) will themselves add nothing to the language of the statute, to help out its supposed meaning. They will imply nothing, infer nothing, and assume nothing, except what is inevitable; they will not go out of the letter of the statute in search of any *historical* evidence as to the meaning of the legislature, to enable them to effectuate any *unjust* intentions not fully expressed by the statute itself. Wherever a statute is supposed to have in view the accomplishment of any unjust end, they will apply the most stringent principles of construction to prevent that object's being effected. They will not go a hair's breadth beyond the literal or inevitable import *of the words* of the statute, even though they should be conscious, all the while, that the real intentions of the makers of it would be entirely defeated by their refusal. The rule, (as has been already stated,) is laid down by the supreme court of the United States in these words:

"Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a

design to effect such objects."—(*United States* vs. *Fisher et al.*, 2 *Cranch*, 390.)*

Such has become the settled doctrine of courts. And although it does not come up to the true standard of law, yet it is good in itself, so far as it goes, and ought to be unflinchingly adhered to, not merely for its own sake, but also as a scaffolding, from which to erect that higher standard of law, to wit, that no language or authority whatever can legalize any thing inconsistent with natural justice. †

Another reason for the rules before given, against all constructions, implications and inferences—except inevitable ones—in favor of injustice, is, that but for them we should have no guaranty that our honest contracts, or honest laws would be honestly administered by the judiciary. It would be nearly or quite impossible for men, in framing their contracts or laws, to use language so as to exclude every possible implication in favor of wrong, if courts were allowed to resort to such implications. *The law therefore excludes them;* that is, the ends of justice—the security of men's rights under their honest contracts, and under honest legislative enactments—make it imperative upon courts of justice to ascribe an innocent and honest meaning to all language that will possibly bear an innocent and honest meaning. If courts of justice could depart from this rule for the purpose of upholding what was contrary to natural right, and could employ

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* This language of the Supreme Court contains an admission of the truth of the charge just made against judges, viz: that rather than lose their offices, they will violate what they know to be law, in subserviency to the legislatures on whom they depend; for it admits, 1st, that the preservation of men's *rights* is the vital principle of law, and, 2d, that courts, (and the Supreme Court of the United States in particular,) will trample upon that principle at the bidding of the legislature, when the mandate comes in the shape of a statute of such "*irresistible clearness*," that its meaning cannot be evaded.

† "Laws are construed strictly to save a right."—*Whitney et al.* vs. *Emmett et al.*, 1 *Baldwin, C. C. R.* 316.

"No law will make a construction do wrong; and there are some things which the law favors, and some it dislikes; it favoreth those things that come from the order of nature."—*Jacob's Law Dictionary, title Law.*

their ingenuity in spying out some implied or inferred authority, for sanctioning what was in itself dishonest or unjust, when such was not the *necessary* meaning of the language used, there could be no security whatever for the honest administration of honest laws, or the honest fulfilment of men's honest contracts. Nearly all language, on the meaning of which courts adjudicate, would be liable, at the caprice of the court, to be perverted from the furtherance of honest, to the support of dishonest purposes. Judges could construe statutes and contracts in favor of justice or injustice, as their own pleasure might dictate.

Another reason of the rules, is, that as governments have, and can have no legitimate objects or powers opposed to justice and natural right, it would be treason to all the legitimate purposes of government, for the judiciary to give any other than an honest and innocent meaning to any language, that would bear such a construction.

The same reasons that forbid the allowance of any unnecessary implication or inference in favor of a wrong, in the construction of a statute, forbids also the introduction of any *extraneous or historical* evidence to prove that the intentions of the legislature were to sanction or authorize a wrong.

The same rules of construction, that apply to statutes, apply also to all those private contracts between man and man, *which courts actually enforce.* But as it is both the right and the duty of courts to invalidate altogether such private contracts as are inconsistent with justice, they will admit evidence exterior to their words, *if offered by a defendant for the purpose of invalidating them.* At the same time, a plaintiff, or party that wishes to set up a contract, or that claims its fulfilment, will not be allowed to offer any evidence exterior to its words, to prove that the contract is contrary to justice—because, if his evidence were admitted, it would not make his unjust claim a legal one; but only invalidate it altogether. But as courts do not claim the right of invalidating statutes and constitutions, they will not admit evidence, exte-

rior to their language, to give them such a meaning, that they ought to be invalidated.

I think no one—no lawyer, certainly—will now deny that it is a legal rule of interpretation—that must be applied to all statutes, and also to all private contracts *that are to be enforced*—that an innocent meaning, *and nothing beyond an innocent meaning*, must be given to all language that will possibly bear such a meaning. All will probably admit that the rule, as laid down by the supreme court of the United States, is correct, to wit, that "where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a design to effect such objects."

But perhaps it will be said that these rules, which apply to all statutes, and to all private contracts that are to be enforced, do not apply to the constitution. And why do they not? No reason whatever can be given. A constitution is nothing but a contract, entered into by the mass of the people, instead of a few individuals. This contract of the people at large becomes a law unto the judiciary that administer it, just as private contracts, (so far as they are consistent with natural right,) are laws unto the tribunals that adjudicate upon them. All the essential principles that enter into the question of obligation, in the case of a private contract, or a legislative enactment, enter equally into the question of the obligation of a contract agreed to by the whole mass of the people. This is too self-evident to need illustration.

Besides, is it not as important to the safety and rights of all interested, that a constitution or compact of government, established by a whole people, should be so construed as to promote the ends of justice, as it is that a private contract or a legislative enactment should be thus construed? Is it not as necessary that some check should be imposed upon the judiciary to prevent them from perverting, at pleasure, the whole purpose and character of the government, as it is that

they should be restrained from perverting the meaning of a private contract, or a legislative enactment? Obviously written compacts of government could not be upheld for a day, if it were understood by the mass of the people that the judiciary were at liberty to interpret them according to their own pleasure, instead of their being restrained by such rules as have now been laid down.

Let us now look at some of the provisions of the constitution, and see what crimes might be held to be authorized by them, if their meaning were not to be ascertained and restricted by such rules of interpretation as apply to all other legal instruments.

The second amendment to the constitution declares that "the right of the people to keep and bear arms shall not be infringed."

This right "to keep and bear arms," implies the right to use them—as much as a provision securing to the people the right to buy and keep food, would imply their right also to eat it. But this implied right to use arms, is only a right to use them in a manner consistent with natural rights—as, for example, in defence of life, liberty, chastity, &c. Here is an innocent and just meaning, of which the words are susceptible; and such is therefore the *extent* of their legal meaning. If courts could go beyond the innocent and necessary meaning of the words, and imply or infer from them an authority for anything contrary to natural right, they could imply a constitutional authority in the people to use arms, not merely for the just and innocent purposes of defence, but also for the criminal purposes of aggression—for purposes of murder, robbery, or any other acts of wrong to which arms are capable of being applied. The mere *verbal* implication would as much authorize the people to use arms for unjust, as for just, purposes. But the *legal* implication gives only an authority for their innocent use. And why? Simply because justice is the end of all law—the legitimate end of all compacts of government. It is itself law; and there is no right or power among men to destroy its obligation.

Take another case. The constitution declares that "Congress shall have power to *regulate commerce* with foreign nations, and among the several states, and with the Indian tribes."

This power has been held by the supreme court to be an exclusive one in the general government—and one that cannot be controlled by the states. Yet it gives congress no constitutional authority to legalize any commerce inconsistent with natural justice between man and man; although the *mere* verbal import of the words, if stretched to their utmost tension in favor of the wrong, would authorize congress to legalize a commerce in poisons and deadly weapons, for the express purpose of having them used in a manner inconsistent with natural right—as for the purposes of murder.

At natural law, and on principles of natural right, a person, who should *sell* to another a weapon or a poison, knowing that it would, or intending that it should be used for the purpose of murder, would be legally an accessary to the murder that should be committed with it. And if the grant to congress of a "power to regulate commerce," can be stretched beyond the *innocent* meaning of the words—beyond the power of regulating and authorizing a commerce that is consistent with natural justice—and be made to cover every thing, intrinsically criminal, that can be perpetrated under the name of commerce—then congress have the authority of the constitution for granting to individuals the liberty of bringing weapons and poisons from "foreign nations" into this, and from one state into another, and selling them openly for the express purposes of murder, without any liability to legal restraint or punishment.

Can any stronger cases than these be required to prove the necessity, the soundness, and the inflexibility of that rule of law, which requires the judiciary to ascribe an innocent meaning to all language that will possibly bear an innocent meaning? and to ascribe *only* an innocent meaning to language whose mere verbal import might be susceptible of both an

innocent *and* criminal meaning? If this rule of interpretation could be departed from, there is hardly a power granted to congress, that might not *lawfully* be perverted into an authority for legalizing crimes of the highest grade.

In the light of these principles, then, let us examine those clauses of the constitution, that are relied on as recognizing and sanctioning slavery. They are but three in number.

The one most frequently quoted is the third clause of Art. 4, Sec. 2, in these words:

"No person, held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

There are several reasons why this clause renders no sanction to slavery.

1. It must be construed, if possible, as sanctioning nothing contrary to natural right.

If there be any "service or labor" whatever, to which any "persons" whatever may be "held," *consistently with natural right*, and which any person may, consistently with natural right, "*claim*" as his "*due*" of another, such "service or labor," and *only* such, is recognized and sanctioned by this provision.

It needs no argument to determine whether the "service or labor," that is exacted of a slave, is such as can be "*claimed*," *consistently with natural right*, as being "*due*" from him to his master. And if it cannot be, some other "service or labor" must, if possible, be found for this clause to apply to.

The proper definition of the word "service," in this case, obviously is, the labor of a *servant*. And we find, that at and before the adoption of the constitution, the persons recognized by the state laws as "servants," constituted a numerous class. The statute books of the states abounded with statutes in regard to "servants." Many seem to have been

indented as servants by the public authorities, on account of their being supposed incompetent, by reason of youth and poverty, to provide for themselves. Many were doubtless indented as apprentices by their parents and guardians, as now. The English laws recognized a class of servants—and many persons were brought here from England, in that character, and retained that character afterward. Many indented or contracted themselves as servants for the payment of their passage money to this country. In these various ways, the class of persons, recognized by the statute books of the states as "servants," was very numerous; and formed a prominent subject of legislation. Indeed, no other evidence of their number is necessary than the single fact, that "persons bound to service for a term of years," were specially noticed by the constitution of the United States, (Art. 1, Sec. 2,) which requires that they be counted as units in making up the basis of representation. There is therefore not the slightest apology for pretending that there was not a sufficient class for the words "service or labor" to refer to, without supposing the existence of slaves.*

2. "*Held to service or labor,*" is no legal description of slavery. Slavery is property in man. It is not necessarily attended with either "service or labor." A very considerable portion of the slaves are either too young, too old, too sick,

* In the convention that framed the constitution, when this clause was under discussion, "servants" were spoken of as a distinct class from "slaves." For instance, "Mr. Butler and Mr. Pickney moved to require 'fugitive slaves *and servants* to be delivered up like criminals.'" Mr. Sherman objected to delivering up either slaves or servants. He said he "saw no more propriety in the public seizing and surrendering a slave *or servant*, than a horse."—*Madison Papers, p.*1447-8.

The language finally adopted shows that they at last agreed to deliver up "*servants,*" but *not* "*slaves*"—for as the word "servant" does not mean "slave," the word "service" does not mean slavery.

These remarks in the convention are quoted, not because the intentions of the convention are of the least legal consequence whatever; but to rebut the silly arguments of those who pretend that the convention, and not the people, adopted the constitution—and that the convention did not understand the legal difference between the word "servant" and "slave," and therefore used the word "service," in this clause, as meaning slavery.

or too refractory to render "service or labor." As a matter of fact, slaves, who are able to labor, may, in general, be compelled by their masters to do so. Yet labor is not an essential or necessary condition of slavery. The essence of slavery consists in a person's being owned as property—without any reference to the circumstances of his being compelled to labor, or of his being permitted to live in idleness, or of his being too young, or too old, or too sick to labor.

If "service or labor" were either a test, or a necessary attendant of slavery, that test would of itself abolish slavery; because all slaves, before they can render "service or labor," must have passed through the period of infancy, when they could render neither service nor labor, and when, therefore, according to this test, they were free. And if they were free in infancy, they could not be subsequently enslaved.

3. "Held to service or labor in one state, *under the laws thereof.*"

The "*laws*" take no note of the fact whether a slave "labors," or not. They recognize no obligation, on his part, to labor. They will enforce no "*claim*" of a master, upon his slave, for "service or labor." If the slave refuse to labor, the law will not interfere to compel him. The law simply recognizes the master's *right of property* in the slave—just as it recognizes his right of property in a horse. Having done that, it leaves the master to compel the slave, if he please, and if he can—as he would compel a horse—to labor. If the master do not please, or be not able, to compel the slave to labor, the law takes no more cognizance of the case than it does of the conduct of a refractory horse. In short, it recognizes no obligation, on the part of the slave, to labor, if he can avoid doing so. It recognizes no "*claim*," on the part of the master, upon his slave, for "services or labor," as "*due*" from the latter to the former.

4. Neither "service" nor "labor" is necessarily slavery; and not being necessarily slavery, the words cannot, in this case, be strained beyond their necessary meaning, to

make them sanction a wrong. The law will not allow words to be strained a hair's breadth beyond their *necessary* meaning, to make them authorize a wrong. *The stretching, if there be any, must always be towards the right.* The words "service or labor" do not necessarily, nor in their common acceptation, so much as suggest the idea of slavery—that is, they do not suggest the idea of the laborer or servant being the property of the person for whom he labors. An indented apprentice serves and labors for another. He is "*held*" to do so, under a contract, and for a consideration, that are recognized, by the laws, as legitimate, and consistent with natural right. Yet he is not owned as property. A condemned criminal is "held to labor"—yet he is not owned as property. The law allows no such straining of the meaning of words towards the wrong, as that which would convert the words "service or labor" (of men) into *property in man*—and thus make a man, who serves or labors for another, the property of that other.

5. "No person held to service or labor, in one state, under the *laws* thereof."

The "*laws*," here mentioned, and impliedly sanctioned, are, of course, only *constitutional* laws—laws, that are consistent, both with the constitution of the state, and the constitution of the United States. None others are "*laws*," correctly speaking, however they may attempt to "hold persons to service or labor," or however they may have the forms of laws on the statute books.

This word "laws," therefore, being a material word, leaves the whole question just where it found it—for it certainly does not, *of itself*—nor indeed does any other part of the clause—say that acts of a legislature, declaring one man to be the property of another, is a "*law*" within the meaning of the constitution. As far as the word "*laws*" says any thing on the subject, it says that such acts are *not* laws—for such acts are clearly inconsistent with natural law—and it yet remains to be shown that they are consistent with any constitution whatever, state or national.

The burden of proof, then, still rests upon the advocates of slavery, to show that an act of a state legislature, declaring one man to be the property of another, is a "law," within the meaning of this clause. To assert simply that it is, without proving it to be so, is a mere begging of the question—for that is the very point in dispute.

The question, therefore, of the *constitutionality* of the slave acts must first be determined, before it can be decided that they are "laws" within the meaning of the constitution. That is, they must be shown to be consistent with the constitution, before they can be said to be sanctioned as "laws" by the constitution. Can any proposition be plainer than this? And yet the reverse must be assumed, in this case, by the advocates of slavery.

The simple fact, that an act purports to "hold persons to service or labor," clearly cannot, *of itself*, make the act constitutional. If it could, any act, purporting to hold "persons to service or labor," would necessarily be constitutional, without any regard to the "persons" so held, or the conditions on which they were held. It would be constitutional, *solely because it purported to hold persons to service or labor.* If this were the true doctrine, any of us, without respect of persons, might be held to service or labor, at the pleasure of the legislature. And then, if "service or labor" mean slavery, it would follow that any of us, without discrimination, might be made slaves. And thus the result would be, that the acts of a legislature would be constitutional, *solely because they made slaves of the people.* Certainly this would be a new test of the constitutionality of laws.

All the arguments in favor of slavery, that have heretofore been drawn from this clause of the constitution, have been founded on the assumption, that if an act of a legislature did but purport to "hold persons to service or labor"—no matter how, on what conditions, or for what cause—that fact alone was sufficient to make the act constitutional. The entire sum of the argument, in favor of slavery, is but this,

viz. the constitution recognizes the constitutionality of "laws" that "hold persons to service or labor,"—slave acts "hold persons to service or labor,"—therefore slave acts must be constitutional. This profound syllogism is the great pillar of slavery in this country. It has, (if we are to judge by results,) withstood the scrutiny of all the legal acumen of this nation for fifty years and more. If it should continue to withstand it for as many years as it has already done, it will then be time to propound the following, to wit: The state constitutions recognize the right of men to acquire property; theft, robbery, and murder are among the modes in which property may be acquired; therefore theft, robbery, and murder are recognized by these constitutions as lawful.

No doubt the clause contemplates that there may be constitutional "laws," under which persons may be "held to service or labor." But it does not follow, therefore, that every act, that purports to hold "persons to service or labor," is constitutional.

We are obliged, then, to determine whether a statute be constitutional, before we can determine whether the "service or labor" required by it, is sanctioned by the constitution as being lawfully required. The simple fact, that the statute would "hold persons to service or labor," is, *of itself*, no evidence, either for or against its constitutionality. Whether it be or be not constitutional, may depend upon a variety of contingencies—such as the kind of service or labor required, and the conditions on which it requires it. Any service or labor, that is inconsistent with the duties which the constitution requires of the people, is of course not sanctioned by this clause of the constitution as being lawfully required. Neither, of course, is the requirement of service or labor, *on any conditions, that are inconsistent with any rights that are secured to the people by the constitution*, sanctioned by the constitution as lawful. Slave laws, then, can obviously be held to be sanctioned by this clause of the constitution, only by gratuitously assuming, 1st, that the constitution neither

confers any rights, nor imposes any duties, upon the people of the United States, inconsistent with their being made slaves; and, 2d, that it sanctions the general principle of holding "persons to service or labor" arbitrarily, without contract, without compensation, and without the charge of crime. If this be really the kind of constitution that has been in force since 1789, it is somewhat wonderful that there are so few slaves in the country. On the other hand, if the constitution be not of this kind, it is equally wonderful that we have any slaves at all—for the instrument offers no ground for saying that a colored man may be made a slave, and a white man not.

Again. Slave acts were not "laws" according to any state constitution that was in existence at the time the constitution of the United States was adopted. And if they were not "laws" at that time, they have not been made so since.

6. The constitution itself, (Art. 1. Sec. 2,) in fixing the basis of representation, has plainly *denied* that those described in Art. 4, as "persons held to service or labor," are slaves,—for it declares that "persons bound to service for a term of years" shall be "included" in the "number of *free* persons." There is no *legal* difference between being "bound to service," and being "held to service or labor." The addition, in the one instance, of the words, "for a term of years," does not alter the case, for it does not appear that, in the other, they are "held to service or labor" beyond a fixed term—and, in the absence of evidence from the constitution itself, the presumption must be that they are not—because such a presumption makes it unnecessary to go out of the constitution to find the persons intended, and it is also more consistent with the prevalent municipal, and with natural law.

And it makes no difference to this result, whether the word "free," in the first article, be used in the political sense common at that day, or as the correlative of slavery. In either case, the persons described as "free," could not be made slaves.

7. The words "service or labor" cannot be made to include slavery, unless by reversing the legal principle, that the greater includes the less, and holding that the less includes the greater; that the innocent includes the criminal; that a sanction of what is right, includes a sanction of what is wrong.

Another clause relied on as a recognition of the constitutionality of slavery, is the following, (Art. 1. Sec. 2.):

"Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of *free* persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

The argument claimed from this clause, in support of slavery, rests entirely upon the word "free," and the words "all other persons." Or rather it rests entirely upon the meaning of the word "free," for the application of the words "all other persons" depends upon the meaning given to the word "free." The slave argument *assumes, gratuitously*, that the word "free" is used as the correlative of slavery and thence it infers that the words, "all other persons," mean slaves.

It is obvious that the word "free" affords no argument for slavery, unless a meaning correlative with slavery be *arbitrarily* given to it, for the very purpose of *making* the constitution sanction or recognize slavery. Now it is very clear that no such meaning can be given to the word, *for such a purpose.* The ordinary meaning of a word cannot be thus arbitrarily changed, *for the sake of sanctioning a wrong.* A choice of meaning would be perfectly allowable, and even obligatory, if made for the purpose of *avoiding* any such sanction; but it is entirely inadmissable for the purpose of giving it. The legal rules of interpretation, heretofore laid down, imperatively require this preference of the right,

over the wrong, in all cases where a word is susceptible of different meanings.

The English law had for centuries used the word "free" as describing persons possessing citizenship, or some other franchise or peculiar privilege—as distinguished from aliens, and persons not possessed of such franchise or privilege. This law, and this use of the word "free," as has already been shown, had been adopted in this country from its first settlement. The colonial charters all, (probably without an exception,) recognized it. The colonial legislation generally, if not universally, recognized it. The state constitutions, in existence at the time the constitution of the United States was formed and adopted, used the word in this sense, and no other. The Articles of Confederation—the then existing national compact of union—used the word in this sense, and no other. The sense is an appropriate one in itself; the most appropriate to, and consistent with the whole character of the constitution, of any of which the word is susceptible. In fact, it is the only one that is either appropriate to, or consistent with, the other parts of the instrument. Why, then, is it not the legal meaning? Manifestly it *is* the legal meaning. No reason whatever can be given against it, except that, if such be its meaning, *the constitution will not sanction slavery!* A very good reason—a perfectly unanswerable reason, in fact—in favor of this meaning; but a very futile one against it.

It is evident that the word "free" is not used as the correlative of slavery, because "Indians not taxed" are "excluded" from its application—yet they are not therefore slaves.

Again. The word "free" cannot be presumed to be used as the correlative of slavery—because slavery then had no *legal* existence. The word must obviously be presumed to be used as the correlative of something that did *legally* exist, rather than of something that did not legally exist. If it were used as the correlative of something that did not legally exist, the words "all other persons" would have no legal

application. Until, then, it be shown that slavery had a legal existence, authorized either by the United States constitution, or by the then existing state constitutions—a thing that cannot be shown—the word "free" certainly cannot be claimed to have been used as its correlative.

But even if slavery had been authorized by the *state* constitutions, the word "free," in the United States constitution, could not have been claimed to have been used as its correlative, unless it had appeared that the United States constitution had itself provided or suggested no correlative of the word "free;" for it would obviously be absurd and inadmissible to go out of an instrument to find the intended correlative of one of its own words, when it had itself suggested one. This the constitution of the United States has done, in the persons of aliens. The power of naturalization is, by the constitution, taken from the states, and given exclusively to the United States. The constitution of the United States, therefore, necessarily supposes the existence of aliens—and thus furnishes the correlative sought for. It furnishes a class both for the word "free," and the words "all other persons" to apply to. And yet the slave argument contends that we must overlook these distinctions, necessarily growing out of the laws of the United States, and go out of the constitution of the United States to *find* persons whom it describes as the "free," and "all other persons." And what makes the argument the more absurd is, that by going out of the instrument to the *then existing state constitutions*—the only instruments to which we can go—we can find there *no other* persons for the words to apply to—no other classes answering to the description of the "free persons" and "all other persons,"—than the very classes suggested by the United States constitution itself, to wit, citizens and aliens; (for it has previously been shown that the then existing state constitutions recognized no such persons as slaves.)

If we are obliged, (as the slave argument claims we are,) to go out of the constitution of the United States to find the

class whom it describes as "all other persons" than "the free," we shall, for aught I see, be equally obliged to go out of it to find those whom it describes as the "free"—for "the free," and "all other persons" than "the free," must be presumed to be found described somewhere in the same instrument. If, then, we are obliged to go out of the constitution to find the persons described in it as "the free" and "all other persons," we are obliged to go out of it to ascertain who are the persons on whom it declares that the representation of the government shall be based, and on whom, of course, the government is founded. And thus we should have the absurdity of a constitution that purports to authorize a government, yet leaves us to go in search of the people who are to be represented in it. Besides, if we are obliged to go out of the constitution, to find the persons on whom the government rests, and those persons are arbitrarily prescribed by some other instrument, independent of the constitution, this contradiction would follow, viz., that the United States government would be a subordinate government—a mere appendage to something else—a tail to some other kite —or rather a tail to a large number of kites at once—instead of being, as it declares itself to be, the supreme government—its constitution and laws being the supreme law of the land.

Again. It certainly cannot be admitted that we must go out of the United States constitution to find the classes whom it describes as "the free," and "all other persons" than "the free," until it be shown that the constitution has told us where to go to find them. *In all other cases*, (without an exception, I think,) where the constitution makes any of its provisions dependent upon the state constitutions, or state legislatures, it has particularly described them as depending upon them. But it gives no intimation that it has left it with the state constitutions, or the state legislatures, to prescribe whom *it* means by the terms "free persons" and "all other persons," on whom it requires its own representation to be based. We have, therefore, no more authority from the

constitution of the United States, for going to the state constitutions, to find the classes described in the former as the "free persons" and "all other persons," than we have for going to Turkey or Japan. We are compelled, therefore, to find them in the constitution of the United States itself, if any answering to the description can possibly be found there.

Again. If we were permitted to go to the state constitutions, or to the state statute books, to find who were the persons intended by the constitution of the United States; and if, as the slave argument assumes, it was left to the states respectively to prescribe who should, and who should not, be "free" within the meaning of the constitution of the United States, it would follow that the terms "free" and "all other persons," might be applied in as many different ways, and to as many different classes of persons, as there were different states in the union. Not only so, but the application might also be varied at pleasure in the same state. One inevitable consequence of this state of things would be, that there could be neither a permanent, nor a uniform basis of representation throughout the country. Another possible, and even probable consequence would be, such inextricable confusion, as to the persons described by the same terms in the different states, that Congress could not apportion the national representation at all, in the manner required by the constitution. The questions of law, arising out of the different uses of the word "free," by the different states, might be made so endless and inexplicable, that the state governments might entirely defeat all the power of the general government to make an apportionment.

If the slave construction be put upon this clause, still another difficulty, in the way of making an apportionment, would follow, viz., that congress could have no *legal* knowledge of the persons composing each of the two different classes, on which its representation must be based; for there is no legal record—known to the laws of the United States,

or even to the laws of the states—of those who are slaves, or those who are not. The information obtained by the census takers, (who have no legal records to go to,) must, in the nature of things, be of the most loose and uncertain character, on such points as these. Any accurate or *legal* knowledge on the subject is, therefore, obviously impossible. But if the other construction be adopted, this difficulty is avoided —for congress then have the control of the whole matter, and may adopt such means as may be necessary for ascertaining accurately the persons who belong to each of these different classes. And by their naturalization laws they actually do provide for a *legal* record of all who are made "free" by naturalization.

And this consideration of certainty, as to the individuals and numbers belonging to each of these two classes, "free" and "all other persons," acquires an increased and irresistible force, when it is considered that these different classes of persons constitute also different bases for taxation, as well as representation. The requirement of the constitution is, that "representatives and *direct taxes* shall be apportioned," &c., according to the number of "free persons" and "all other persons." In reference to so important a subject as taxation, *accurate* and *legal* knowledge of the persons and numbers belonging to the different classes, becomes indispensable. Yet under the slave construction this legal knowledge becomes impossible. Under the other construction it is as perfectly and entirely within the power of congress, as, in the nature of things, such a subject can be—for naturalization is a legal process; and legal records, prescribed by congress, may be, and actually are, preserved of all the persons naturalized or made "free" by their laws.

If we adopt that meaning of the word "free," which is consistent with freedom—that meaning which is consistent with natural right—the meaning given to it by the Articles of Confederation, by the then existing state constitutions, by the colonial charters, and by the English law ever since our

ancestors enjoyed the name of freemen, all these difficulties, inconsistencies, contradictions and absurdities, that must otherwise arise, vanish. The word "free" then describes the native and naturalized citizens of the United States, and the words "all other persons" describe resident aliens, "Indians not taxed," and possibly some others. The representation is then placed upon the best, most just, and most rational basis that the words used can be made to describe. The representation also becomes equal and uniform throughout the country. The principle of distinction between the two bases, becomes also a stable, rational and intelligible one—one too necessarily growing out of the exercise of one of the powers granted to congress;—one, too, whose operation could have been foreseen and judged of by the people who adopted the constitution—instead of one fluctuating with the ever changing and arbitrary legislation of the various states, whose mode and motives of action could not have been anticipated. Adopt this definition of the word "free," and the same legislature, (that is, the national one,) that is required by the constitution to apportion the representation according to certain principles, becomes invested—as it evidently ought to be, and as it necessarily must be, to be efficient—with the power of determining, by their own (naturalization) laws, who are the persons composing the different bases on which its apportionment is to be made; instead of being, as they otherwise would be, obliged to seek for these persons through all the statute books of all the different states of the union, and through all the evidences of private property, under which one of these classes might be held. Adopt this definition of the word "free," and the United States government becomes, so far at least as its popular representation—which is its most important feature—is concerned, an independent government, subsisting by its own vigor, and pervaded throughout by one uniform principle. Reject this definition, and the popular national representation, loses at once its nationality, and becomes a mere

dependency on the will of local corporations—a mere shuttlecock to be driven hither and thither by the arbitrary and conflicting legislation of an indefinite number of separate states. Adopt this meaning of the word "free," and the national government becomes capable of knowing its own bases of representation and power, and its own subjects of taxation. Reject this definition, and the government knows not whom it represents, or on whom to levy taxes for its support. Adopt this meaning of the word "free," and some three millions of native born, but now crushed human beings, become, with their posterity, men and citizens. Adopt this meaning—this *legal* meaning—this *only* meaning that can, in this clause, be *legally* given to the word "free," and our constitution becomes, instead of a nefarious compact of conspirators against the rights of man, a consistent and impartial contract of government between *all* "the people of the United States," for securing "to themselves and their posterity the blessings of liberty" and "justice."

Again. We cannot unnecessarily place upon the constitution a meaning directly destructive of the government it was designed to establish. By giving to the word "free" the meaning universally given to it by our political papers of a similar character up to the time the constitution was adopted, we give to the government three millions of citizens, ready to fight and be taxed for its support. By giving to the word "free" a meaning correlative with slavery, we locate in our midst three millions of enemies; thus making a difference of six millions, (one third of our whole number,) in the physical strength of the nation. Certainly a meaning so suicidal towards the government, cannot be given to any part of the constitution, except the language be irresistibly explicit; much less can it be done, (as in this case it would be,) wantonly, unnecessarily, gratuitously, wickedly, and in violation of all previous usage.

Again. If we look into the constitution itself for the meaning of the word "free," we find it to result from the

distinction there recognized between citizens and aliens. If we look into the contemporary state constitutions, we still find the word "free" to express the political relation of the individual to the state, and not any property relation of one individual to another. If we look into the law of nature for the meaning of the word "free," we find that by that law all mankind are free. Whether, therefore, we look to the constitution itself, to the contemporary state constitutions, or to the law of nature, for the meaning of this word "free," the only meaning we shall find is one consistent with the personal liberty of all. On the other hand, if we are resolved to give the word a meaning correlative with slavery, we must go to the lawless code of the kidnapper to find such a meaning. Does it need any argument to prove to which of these different codes our judicial tribunals are bound to go, to find the meaning of the words used in a constitution, that is established professedly to secure liberty and justice?

Once more. It is altogether a false, absurd, violent, unnatural and preposterous proceeding, in construing a political paper, which purports to establish men's relations to the state, and especially in construing the clause in it which fixes the basis of representation and taxation, to give to the words, which describe the persons to be represented and taxed, and which appropriately indicate those relations of men to the state which make them proper subjects of taxation and representation—to give to such words a meaning, which, instead of describing men's relations to the state, would describe merely a personal or property relation of one individual to another, which the state has nowhere else recognized, and which, if admitted to exist, would absolve the persons described from all allegiance to the state, would deny them all right to be represented, and discharge them from all liability to be taxed.

But it is unnecessary to follow out this slave argument into all its ramifications. It sets out with nothing but assumptions, that are gratuitous, absurd, improbable, irrelevant, con-

trary to all previous usage, contrary to natural right, and therefore inadmissible. It conducts to nothing but contradictions, absurdities, impossibilities, indiscriminate slavery, anarchy, and the destruction of the very government which the constitution was designed to establish.

The other clause relied on as a recognition and sanction, both of slavery and the slave trade, is the following:

"The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."—(Art. 1, Sec. 9.)

The slave argument, drawn from this clause, is, that the word "importation" applies only to property, and that it therefore implies, in this clause, that the persons to be imported are necessarily to be imported as property—that is, as slaves.

But the idea that the word "importation" applies only to property, is erroneous. It applies correctly both to persons and things. The definition of the verb "import" is simply "to bring from a foreign country, or jurisdiction, or from another state, into one's own country, jurisdiction or state."—When we speak of "importing" things, it is true that we mentally associate with them the idea of property. But that is simply because *things* are property, and not because the word "import" has any control, in that particular, over the character of the things imported. When we speak of importing "persons," we do not associate with them the idea of property, simply because "persons" are not property.

We speak daily of the "importation of foreigners into the country;" but no one infers therefrom that they are brought in as slaves, but as passengers. A vessel imports, or brings in, five hundred passengers. Every vessel, or master of a vessel, that "brings in" passengers, "imports" them. But such passengers are not therefore slaves. A man imports his

wife and children—but they are not therefore his slaves, or capable of being owned or sold as his property. A man imports a gang of laborers, to clear lands, cut canals, or construct railroads; but not therefore to be held as slaves. An innocent meaning must be given to the word, if it will bear one. Such is the legal rule.

Even the popular understanding of the word "import," when applied to "persons," does not convey the idea of property. It is only when it is applied distinctly to "slaves," that any such idea is conveyed; and then it is the word "slaves," and not the word "import," that suggests the idea of property. Even slave traders and slave holders attach no such meaning to the word "import," when it is connected with the word "persons;" but only when it is connected with the word "slaves."

In the case of Ogden *vs.* Saunders, (12 Wheaton, 332,) Chief Justice Marshall said, that in construing the constitution, "the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are *generally used* by those for whom the instrument was intended." On this principle of construction, there is not the least authority for saying that this provision for "the importation of persons," authorized the importation of them as slaves. To give it this meaning, requires the same stretching of words *towards the wrong*, that is applied, by the advocates of slavery, to the words "service or labor," and the words "free" and "all other persons."

Another reason, which makes it necessary that this construction should be placed upon the word "*importation*," is, that the clause contains no other word that describes the immigration of foreigners. Yet that the clause related to the immigration of foreigners *generally*, and that it restrained congress, (up to the year 1808,) from prohibiting the immigration of foreigners generally, there can be no doubt.

The object, and the only *legal* object, of the clause was to

restrain congress from so exercising their "power of regulating commerce with foreign nations, and among the several states, and with the Indian tribes"—(which power has been decided by the supreme court of the United States, to include a power over navigation and the transportation of passengers in boats and vessels *)—as to obstruct the introduction of new population into such of the states as were desirous of increasing their population in that manner. The clause does not imply at all, that the population, which the states were thus to "admit," was to be a slave population.

The word "importation," (I repeat,) is the only word in the clause, that applies to persons that were to *come into* the country from foreign nations. The word "*migration*" applies only to those who were to *go out from* one of our own states or territories into another. "*Migration*" is the act of *going out* from a state or country; and differs from immigration in this, that immigration is the act of *coming into* a state or country. It is obvious, therefore, that the "*migration*," which congress are here forbidden to prohibit, is simply the *going out* of persons from one of our own states or territories into another—(for that is the only "*migration*" that could come within the jurisdiction of congress)—and that it has no reference to persons *coming in* from foreign countries to our own.

If, then, "migration," as here used, has reference only to persons *going out* from one state into another, the word "*importation*" is the only one in the clause that is applicable to foreigners coming into our country. This word "importation," then, being the only word that can apply to persons coming into the country, it must be considered as substantially synonymous with immigration, and must apply equally to *all* "persons," that are "imported," or brought into the country as passengers. And if it applies equally to all persons, that are brought in as passengers, it does not *imply* that

* Gibbons *vs.* Ogden.—(9 Wheaton, 1.)

any of those persons are slaves; for no one will pretend that this clause ever authorized the state governments to treat as slaves *all* persons that were brought into the country as passengers. And if it did not authorize them to treat all such passengers as slaves, it did not authorize them to treat any of them as such; for it makes no discrimination between the different "persons" that should be thus imported.

Again. The argument, that the allowance of the "importation" of "persons," implies the allowance of property in such persons, would imply a recognition of the validity of the slave laws of other countries; for unless slaves were obtained by valid purchase abroad—which purchase implies the existence and validity of foreign slave laws—the importer certainly could not claim to import his slaves as property; but he would appear, at the custom-house, as a mere pirate, claiming to have his captures legalized. So that, *according to the slave argument*, the simple use of the word "importation," in the constitution, as applied to "persons," bound our government, not only to the sanction and toleration of slavery in our own country, but to the recognition of the validity of the slave laws of other countries.

But farther. The allowance of the "importation" of slaves, as such, under this clause of the constitution, would imply that congress must take actual, and even the most critical cognizance of the slave laws of other countries; and that they should allow neither the mere word of the person calling himself the owner, nor any thing short of the fullest and clearest legal proof, according to the laws of those countries, to be sufficient to enable him to enter his slaves, as property, at the custom-house; otherwise any masters of vessels, from England or France, as well as from Africa, might, on their arrival here, claim their passengers as slaves. Did the constitution, in this clause, by simply using the word "importation," instead of immigration, intend to throw upon the national government—at the hazard of making it a party to the illegal enslavement of human beings—the responsibility of

investigating and deciding upon the legality and credibility of all the evidence that might be offered by the piratical masters of slave ships, to prove their valid purchase of, and their right of property in their human cargoes, according to the slave laws of the countries from which they should bring them? Such must have been the intention of the constitution, if it intended, (as it must, if it intended any thing of this kind,) that the fact of "importation" under the commercial regulations of congress, should be thereafter a sufficient authority for holding in slavery the persons imported.

But perhaps it will be said that it was not the intention of the constitution, that congress should take any responsibility at all in the matter; that it was merely intended that whoever came into the country with a cargo of men, whom he called his slaves, should be permitted to bring them in on his own responsibility, and sell them as slaves for life to our people; and that congress were prohibited only from interfering, or asking any questions as to how he obtained them, or how they became his slaves. Suppose such were the intention of the constitution—what follows? Why, that the national government, the only government that was to be known to foreign nations, the only government that was to be permitted to regulate our commerce, or make treaties with foreign nations, the government on whom alone was to rest the responsibility of war with foreign nations, was bound to permit, (until 1808,) all masters, both of our own ships and of the ships of other nations, to turn pirates, and make slaves of their passengers, whether Englishmen, Frenchmen, or any other civilized people, (for the constitution makes no distinction of "persons" on this point,) bring them into this country, sell them as slaves for life to our people, and thus make our country a rendezvous and harbor for pirates, involve us inevitably in war with every civilized nation in the world, cause ourselves to be outlawed as a people, and bring certain and swift destruction upon the whole nation; and yet this government, that had the sole responsibility of all our

foreign relations, was constitutionally prohibited from interfering in the matter, or from doing any thing but lifting its hands in prayer to God and these pirates, that the former would so far depart, and the latter so far desist from their usual courses, as might be necessary to save us, until 1808, (after which time we would take the matter into our own hands, and, by prohibiting the causes of the danger, save ourselves,) from the just vengeance, which the rest of mankind were taking upon us.

This is the kind of constitution, under which, (according to the slave argument,) we lived until 1808.

But is such the real character of the constitution? By it, did we thus really avow to the world that we were a nation of pirates? that our territory should be a harbor for pirates? that our people were constitutionally licensed to enslave the people of all other nations, without discrimination, (for the instrument makes no discrimination,) whom they could either kidnap in their own countries, or capture on the high seas? and that we had even prohibited our only government that could make treaties with foreign nations, from making any treaty, until 1808, with any particular nation, to exempt the people of that nation from their liability to be enslaved by the people of our own? The slave argument says that we did avow all this. If we really did, perhaps all that can be said of it now is, that it is very fortunate for us that other nations did not take us at our word. For if they had taken us at our word, we should, before 1808, have been among the nations that were.

Suppose that, on the organization of our government, we had been charged by foreign nations, with having established a piratical government—how could we have rebutted the charge otherwise than by denying that the words "importation of persons" legally implied that the persons imported were slaves? Suppose that European ambassadors had represented to president Washington that their governments considered our constitution as licensing our people to kidnap the

people of other nations, without discrimination, and bring them to the United States as slaves. Would he not have denied that the legal meaning of the clause did any thing more than secure the free introduction of foreigners as passengers and freemen? Or would he—*he*, the world-renowned champion of human rights—have indeed stooped to the acknowledgment that in truth he was the head of a nation of pirates, whose constitution did guarantee the freedom of kidnapping men abroad, and importing them as slaves? And would he, in the event of this acknowledgment, have sought to avert the destruction, which such an avowal would be likely to bring upon the nation, by pleading that, although such was the legal meaning of the words of our constitution, we yet had an understanding, (an honorable understanding!) among ourselves, that we would not take advantage of the license to kidnap or make slaves of any of the citizens of those civilized and powerful nations of Europe, that kept ships of war, and knew the use of gunpowder and cannon; but only the people of poor, weak, barbarous and ignorant nations, who were incapable of resistance and retaliation?

Again. Even the allowance of the simple "*importation*" of slaves—(and that is the most that is *literally* provided for—and the word "importation" must be construed to the letter,) would not, of itself, give any authority for the continuance of the slavery *after* "importation." If a man bring either property or persons into this country, he brings them in to abide the constitutional laws of the country; and not to be held according to the customs of the country from which they were brought. Were it not so, the Turk might import a harem of Georgian slaves, and, at his option, either hold them as his own property, or sell them as slaves to our own people, in defiance of any principles of freedom that should prevail amongst us. To allow this kind of "importation," would be to allow not merely the importation of foreign "persons," but also of foreign laws to take precedence of our own.

Finally. The conclusion, that congress were restrained, by this clause, only from prohibiting the immigration of a foreign population, and not from prohibiting the importation of slaves, to be held as slaves after their importation—is the more inevitable, from the fact that the power given to congress of naturalizing foreigners, is entirely unlimited—except that their laws must be uniform throughout the United States. They have perfect power to pass laws that shall naturalize every foreigner without distinction, the moment he sets foot on our soil. And they had this power as perfectly prior to 1808, as since. And it is a power entirely inconsistent with the idea that they were bound to admit, and forever after to acknowledge as slaves, all or any who might be attempted to be brought into the country as such.

One other provision of the constitution, viz: the one that "the United States shall protect each of the States against domestic violence"—has sometimes been claimed as a special pledge of impunity and succor to that kind of "violence," which consists in one portion of the people's standing constantly upon the necks of another portion, and robbing them of all civil privileges, and trampling upon all their personal rights. The argument seems to take it for granted, that the only proper way of protecting a "*republican*" state (for the states are all to be "republican,") against "domestic violence," is to plant men firmly upon one another's necks, (about in the proportion of two upon one,) arm the two with whip and spur, and then keep an armed force standing by to cut down those that are ridden, if they dare attempt to throw the riders. When the ridden portion shall, by this process, have been so far subdued as to bear the burdens, lashings and spurrings of the other portion without resistance, then the state will have been secured against "domestic violence," and the "republican form of government" will be completely successful.

This version of this provision of the constitution presents a fair illustration of those new ideas of law and language,

that have been invented for the special purpose of bringing slavery within the pale of the constitution.

We have thus examined all those clauses of the constitution, that have been relied on to prove that the instrument recognizes and sanctions slavery. No one would have ever dreamed that either of these clauses alone, or that all of them together, contained so much as an allusion to slavery, had it not been for circumstances extraneous to the constitution itself. And what are these extraneous circumstances? They are the existence and toleration, in one portion of the country, of a crime that embodies within itself nearly all the other crimes, which it is the principal object of all our governments to punish and suppress; a crime which we have therefore no more right to presume that the constitution of the United States intended to sanction, than we have to presume that it intended to sanction all the separate crimes which slavery embodies, and our governments prohibit. Yet we have *gratuitously* presumed that the constitution intended to sanction all these separate crimes, as they are comprehended in the general crime of slavery. And acting upon this gratuitous presumption, we have sought, in the words of the constitution, for some hidden meaning, which we could imagine to have been understood, by the initiated, as referring to slavery; or rather we have presumed its words to have been used as a kind of cypher, which, among confederates in crime, (as we presume its authors to have been,) was meant to stand for slavery. In this way, and in this way only, we pretend to have discovered, in the clauses that have been examined, a hidden, yet legal sanction of slavery. In the name of all that is legal, who of us are safe, if our government, instead of searching our constitution to find authorities for maintaining justice, are to continue to busy themselves in such prying and microscopic investigations, after such disguised and enigmatical authorities for such wrongs as that of slavery, and their pretended discoveries are to be adopted as law, which they are sworn to carry into execution?

The clauses mentioned, taken either separately or collectively, neither assert, imply, sanction, recognize nor acknowledge any such thing as slavery. They do not even speak of it. They make no allusion to it whatever. They do not suggest, and, of themselves, never would have suggested the idea of slavery. There is, in the whole instrument, no such word as slave or slavery; nor any language that can legally be made to assert or imply the existence of slavery. There is in it nothing about color; nothing from which a liability to slavery can be predicated of one person more than another; or from which such a liability can be predicated of any person whatever. The clauses, that have been claimed for slavery, are all, in themselves, honest in their language, honest in their legal meaning; and they can be made otherwise only by such gratuitous assumptions against natural right, and such straining of words in favor of the wrong, as, if applied to other clauses, would utterly destroy every principle of liberty and justice, and allow the whole instrument to be perverted to every conceivable purpose of tyranny and crime.

Let us now look at the *positive* provisions of the constitution, *in favor of liberty*, and see whether they are not only inconsistent with any legal sanction of slavery, but also whether they must not, of themselves, have necessarily extinguished slavery, if it had had any constitutional existence to be extinguished.

And, first, the constitution made all "the people of the United States" *citizens* under the government to be established by it; for all of those, by whose authority the constitution declares itself to be established, must of course be presumed to have been made citizens under it. And whether they were entitled or not to the right of suffrage, they were at least entitled to all the personal liberty and protection, which the constitution professes to secure to "the people" generally.

Who, then, established the constitution?

The preamble to the constitution has told us in the plain-

est possible terms, to wit, that "We, *the people* of the United States" "do ordain and establish this constitution," &c.

By "the people of the United States," here mentioned, the constitution intends *all* "the people" then permanently inhabiting the United States. If it does not intend all, who were intended by "the people of the United States?"—The constitution itself gives no answer to such a question.—It does not declare that "we, the *white* people," or "we, the *free* people," or "we, a *part* of the people"—but that "we, *the* people"—that is, we the *whole* people—of the United States, "do ordain and establish this constitution."

If the *whole* people of the United States were not recognized as citizens by the constitution, then the constitution gives no information as to what portion of the people were to be citizens under it. And the consequence would then follow that the constitution established a government that could not know its own citizens.

We cannot go out of the constitution for evidence to prove who were to be citizens under it. We cannot go out of a written instrument for evidence to prove the parties to it, nor to explain its meaning, except the language of the instrument on that point be ambiguous. In this case there is no ambiguity. The language of the instrument is perfectly explicit and intelligible.

Because the whole people of the country were not allowed to vote on the ratification of the constitution, it does not follow that they were not made citizens under it; for women and children did not vote on its adoption; yet they are made citizens by it, and are entitled as citizens to its protection; and the state governments cannot enslave them. The national constitution does not limit the right of citizenship and protection by the right of suffrage, any more than do the state constitutions. Under the most, probably under all the state constitutions, there are persons who are denied the right of suffrage—but they are not therefore liable to be enslaved.

Those who did take part in the actual ratification of the

constitution, acted in behalf of, and, *in theory*, represented the authority of the whole people. Such is the theory in this country wherever suffrage is confined to a few; and such is the virtual declaration of the constitution itself. The declaration that "we *the people* of the United States do ordain and establish this constitution," is equivalent to a declaration that those who actually participated in its adoption, acted in behalf of all others, as well as for themselves.

Any private intentions or understandings, on the part of one portion of the people, as to who should be citizens, cannot be admitted to prove that such portion only were intended by the constitution, to be citizens; for the intentions of the other portion would be equally admissible to exclude the exclusives. The mass of the people can claim citizenship under the constitution, on no other ground than as being a part of "the people of the United States;" and such claim necessarily admits that all other "people of the United States" are equally citizens.

That the designation, "We the people of the United States," included the whole people that properly belonged to the United States, is also proved by the fact that no exception is made in any other part of the instrument.

If the constitution had intended that any portion of "the people of the United States" should be excepted from its benefits, disfranchised, outlawed, enslaved, it would of course have designated these exceptions with such particularity as to make it sure that none but the true persons intended would be liable to be subjected to such wrongs. Yet, instead of such particular designation of the exceptions, we find no designation whatever of the kind. But on the contrary, we *do* find, in the preamble itself, a sweeping declaration to the effect that there are no such exceptions; that the whole people of the United States are citizens, and entitled to liberty, protection, and the dispensation of justice under the constitution.

If it be admitted that the constitution designated its own citizens, then there is no escape from the conclusion that it

designated the whole people of the United States as such. On the other hand, if it be denied that the constitution designated its own citizens, one of these two conclusions must follow, viz., 1st, that it has no citizens; or, 2d, that it has left an unrestrained power in the *state* governments to determine who may, and who may not, be citizens of the *United States* government. If the first of these conclusions be adopted, viz., that the constitution has no citizens, then it follows that there is really no United States government, except on paper—for there would be as much reason in talking of an army without men, as of a government without citizens. If the second conclusion be adopted, viz., that the state governments have the right of determining who may, and who may not be citizens of the United States government, then it follows that the state governments may at pleasure destroy the government of the United States, by enacting that none of their respective inhabitants shall be citizens of the United States.

This latter is really the doctrine of some of the slave states—the "state-rights" doctrine, so called. That doctrine holds that the general government is merely a confederacy or league of the several states, *as states*; not a government established by the people, *as people*. This "state-rights" doctrine has been declared unconstitutional by reiterated opinions of the supreme court of the United States;* and, what is of more consequence, it is denied also by the preamble to the constitution itself, which declares that it is "the people," (and not the state governments,) that ordain and

* "The government (of the U. S.) proceeds directly from the people; is 'ordained and established' in the name of the people."—*M'Culloch* vs. *Maryland*, 4 *Wheaton*, 403.

"The government of the Union is emphatically and truly, a government of the people; and in form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."—*Same*, pages 404, 405.

"The constitution of the United States was ordained and established, *not* by the United States in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.'"—*Martin* vs. *Hunter's lessee*, 1 *Wheaton*, 324.

establish it. It is true also that the constitution was ratified by conventions of the people, and not by the legislatures of the states. Yet because the constitution was ratified by conventions of the states *separately*, (as it naturally would be for convenience, and as it necessarily must have been for the reason that none but the people of the respective states could recall any portion of the authority they had delegated to their state governments, so as to grant it to the United States government,)—yet because it was thus ratified, I say, some of the slave states have claimed that the general government was a league of states, instead of a government formed by "the people." The true reason why the slave states have held this theory, probably is, because it would give, or appear to give, to the states the right of determining who should, and who should not, be citizens of the United States. They probably saw that if it were admitted that the constitution of the United States had designated its own citizens, it had undeniably designated the whole people of the then United States as such; and that, as a state could not enslave a citizen of the United States, (on account of the supremacy of the constitution of the United States,) it would follow that there could be no constitutional slavery in the United States.

Again. If the constitution was established by authority of all "the people of the United States," they were all legally parties to it, and citizens under it. And if they were parties to it, and citizens under it, it follows that neither they, *nor their posterity*, nor any nor either of them, can ever be legally enslaved within the territory of the United States; for the constitution declares its object to be, among other things, "to secure the blessings of liberty to *ourselves, and our posterity.*" This purpose of the national constitution is a law paramount to all state constitutions; for it is declared that "this constitution, and the laws of the United States that shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges *in*

every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

No one, I suppose, doubts that if the state governments were to abolish slavery, the slaves would then, without further legislation, become citizens of the United States. Yet, in reality, if they would become citizens then, they are equally citizens now—else it would follow that the state governments had an arbitrary power of making citizens of the United States; or—what is equally absurd—it would follow that disabilities, arbitrarily imposed by the state governments, upon native inhabitants of the country, were, of themselves, sufficient to deprive such inhabitants of their citizenship, which would otherwise have been conferred upon them by the constitution of the United States. To suppose that the state governments are thus able, arbitrarily, to keep in abeyance, or arbitrarily to withhold from any of the inhabitants of the country, any of the benefits or rights which the national constitution intended to confer upon them, would be to suppose that the state constitutions were paramount to the national one. The conclusion, therefore, is inevitable, that the state governments have no power to withhold the rights of citizenship from any who are otherwise competent to become citizens. And as all the native born inhabitants of the country are at least competent to become citizens of the United States, (if they are not already such,) the state governments have no power, by slave laws or any other, to withhold the rights of citizenship from them.

But however clear it may be, that the constitution, in reality, made citizens of all "the people of the United States," yet it is not necessary to maintain that point, in order to prove that the constitution gave no guaranty or sanction to slavery—for if it had not already given citizenship to all, it nevertheless gave to the government of the United States unlimited power of offering citizenship to all. The power given to the government of passing naturalization laws, is entirely unrestricted, except that the laws must be

uniform throughout the country. And the government have undoubted power to offer naturalization and citizenship to every person in the country, whether foreigner or native, who is not already a citizen. To suppose that we have in the country three millions of native born inhabitants, not citizens, and whom the national government has no power to make citizens, when its power of naturalization is entirely unrestricted, is a palpable contradiction.

But further. The constitution of the United States must be made consistent with itself throughout; and if any of its parts are irreconcilable with each other, those parts that are inconsistent with liberty, justice and right, must be thrown out for inconsistency. Besides the provisions already mentioned, there are numerous others, in the constitution of the United States, that are entirely and irreconcilably inconsistent with the idea that there either was, or could be, any constitutional slavery in this country.

Among these provisions are the following:

First. Congress have power to lay a capitation or poll tax upon the people of the country. Upon whom shall this tax be levied? and who must be held responsible for its payment? Suppose a poll tax were laid upon a man, whom the state laws should pretend to call a slave. Are the United States under the necessity of investigating, or taking any notice of the fact of slavery, either for the purpose of excusing the man himself from the tax, or of throwing it upon the person claiming to be his owner? Must the government of the United States find a man's pretended owner, or only the man himself, before they can tax him? Clearly the United States are not bound to tax any one but the individual himself, or to hold any other person responsible for the tax. Any other principle would enable the state governments to defeat any tax of this kind levied by the United States. Yet a man's liability to be held personally responsible for the payment of a tax, levied upon himself by the government of the United States, is inconsistent with the idea that the govern-

ment is bound to recognize him as not having the ownership of his own person.

Second. "The congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

This power is held, by the supreme court of the United States, to be an exclusive one in the general government; and it obviously must be so, to be effectual—for if the states could also interfere to regulate it, the states could at pleasure defeat the regulations of congress.

Congress, then, having the exclusive power of regulating this commerce, they only (if any body) can say who may, and who may not, carry it on; and probably even they have no power to discriminate arbitrarily between individuals.—But, in no event, have the *state* governments any right to say who may, or who may not, carry on "commerce with foreign nations," or "among the several states," or "with the Indian tribes." Every individual—naturally competent to make contracts—whom the state laws declare to be a slave, probably has, and certainly may have, under the regulations of congress, as perfect a right to carry on "commerce with foreign nations, and among the several states, and with the Indian tribes," as any other citizen of the United States can have—"any thing in the constitution or laws of any state to the contrary notwithstanding." Yet this right of carrying on commerce is a right entirely inconsistent with the idea of a man's being a slave.

Again. It is a principle of law that the right of traffic is a natural right, and that all commerce (that is intrinsically innocent) is therefore lawful, except what is prohibited by positive legislation. Traffic with the slaves, either by people of foreign nations, or by people belonging to other states than the slaves, has never (so far as I know) been prohibited by congress, which is the only government, (if any,) that has power to prohibit it. Traffic with the slaves is therefore as lawful at this moment, under the constitution of the United

States, as is traffic with their masters; and this fact is entirely inconsistent with the idea that their bondage is constitutional.

Third. "The congress shall have power to establish post offices and post roads."

Who, but congress, have any right to say who may send, or receive letters by the United States posts? Certainly no one. They have undoubted authority to permit any one to send and receive letters by their posts—"any thing in the constitutions or laws of the states to the contrary notwithstanding." Yet the right to send and receive letters by post, is a right inconsistent with the idea of a man's being a slave.

Fourth. "The congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Suppose a man, whom a state may pretend to call a slave, should make an invention or discovery — congress have undoubted power to secure to such individual himself, by patent, the "*exclusive*"—(mark the word)—the "exclusive right" to his invention or discovery. But does not this "*exclusive right*" in the inventor himself, exclude the right of any man, who, under a state law, may claim to be the owner of the inventor? Certainly it does. Yet the slave code says that whatever is a slave's is his owner's. This power, then, on the part of congress, to secure to an individual the exclusive right to his inventions and discoveries, is a power inconsistent with the idea that that individual himself, and all he may possess, are the property of another.

Fifth. "The congress shall have power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" also "to raise and support armies;" and "to provide and maintain a navy."

Have not congress authority, under these powers, to enlist soldiers and sailors, *by contract with themselves*, and to pay them their wages, grant them pensions, and secure their wages

and pensions to their own use, without asking the permission either of the state governments, or of any individuals whom the state governments may see fit to recognize as the owners of such soldiers and sailors? Certainly they have, in defiance of all state laws and constitutions whatsoever; and they have already asserted that principle by enacting that pensions, paid by the United States to their soldiers, shall not be liable to be taken for debt, under the laws of the states. Have they not authority also to grant letters of marque and reprisal, and to secure the prizes, to a ship's crew of blacks, as well as of whites? To those whom the State governments call slaves, as well as to those whom the state governments call free?—Have not congress authority to make contracts, for the defence of the nation, with any and all the inhabitants of the nation, who may be willing to perform the service? Or are they obliged first to ask and obtain the consent of those private individuals who may pretend to own the inhabitants of this nation? Undoubtedly congress have the power to contract with whom they please, and to secure wages and pensions to such individuals, in contempt of all state authority. Yet this power is inconsistent with the idea that the constitution recognizes or sanctions the legality of slavery.

Sixth. "The congress shall have power to provide for the organizing, *arming* and disciplining the *militia*, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress." Also "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

Have not congress, under these powers, as undoubted authority to enroll in the militia, and "*arm*" those whom the states call slaves, and authorize them always to keep their arms by them, even when not on duty, (that they may at all times be *ready* to be "called forth" "to execute the laws

of the Union, suppress insurrections, and repel invasions,") as they have thus to enroll and arm those whom the states call free? Can the state governments determine who may, and who may not compose the militia of the "United States?"

Look, too, at this power, in connection with the second amendment to the constitution; which is in these words:

"A well regulated militia being necessary to the security of a free state, the right of *the people* to keep and bear arms shall not be infringed."

These provisions obviously recognize the natural right of all men "to keep and bear arms" for their personal defence; and prohibit both congress and the state governments from infringing the right of "the people"—that is, of *any* of the people—to do so; and more especially of any whom congress have power to include in their militia. This right of a man "to keep and bear arms," is a right palpably inconsistent with the idea of his being a slave. Yet the right is secured as effectually to those whom the states presume to call slaves, as to any whom the states condescend to acknowledge free.

Under this provision any man has a right either to give or sell arms to those persons whom the states call slaves; and there is no *constitutional* power, in either the national or state governments, that can punish him for so doing; or that can take those arms from the slaves; or that can make it criminal for the slaves to use them, if, from the inefficiency of the laws, it should become necessary for them to do so, in defence of their own lives or liberties; for this constitutional right to keep arms implies the constitutional right to use them, if need be, for the defence of one's liberty or life.

Seventh. The constitution of the United States declares that "no state shall pass *any* law impairing the obligation of contracts."

"The obligation of contracts," here spoken of, is, of necessity, the *natural obligation;* for that is the only real or true obligation that any contracts can have. It is also the

only obligation, which courts recognize in any case, except where legislatures arbitrarily interfere to impair it. But the prohibition of the constitution is upon the states' passing any law whatever that shall impair the natural obligation of men's contracts. Yet, if slave laws were constitutional, they would effectually impair the obligation of all contracts entered into by those who are made slaves; for the slave laws must necessarily hold that all a slave's contracts are void.

This prohibition upon the states to pass *any* law impairing the natural obligation of men's contracts, implies that all men have a constitutional right to enter into all contracts that have a natural obligation. It therefore *secures* the constitutional right of all men to enter into such contracts, and to have them respected by the state governments. Yet this constitutional right of all men to enter into all contracts that have a natural obligation, and to have those contracts recognized by law as valid, is a right plainly inconsistent with the idea that men can constitutionally be made slaves.

This provision therefore absolutely prohibits the passage of slave laws, because laws that make men slaves must necessarily impair the obligation of all their contracts.

Eighth. Persons, whom some of the state governments recognize as slaves, are made eligible, by the constitution of the United States, to the office of president of the United States. The constitutional provision on this subject is this:

"No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident of the United States."

According to this provision, *all* "persons," * who have resided within the United States fourteen years, have attained

* That is, male persons. The constitution, whenever it uses the pronoun, in speaking of the president, uniformly uses the masculine gender—from which it may be inferred that male persons only were intended to be made eligible to the office.

the age of thirty-five years, and are either *natural born citizens, or were citizens of the United States at the time of the adoption of the constitution*, are eligible to the office of president. No other qualifications than these being required by the constitution, no others can be legally demanded. The only question, then, that can arise, is as to the word "citizen." Who are the persons that come within this definition, as here used? The clause itself divides them into two classes, to wit, the "natural born," and those who were "citizens of the United States at the time of the adoption of the constitution." In regard to this latter class, it has before been shown, from the preamble to the constitution, that all who were "people of the United States," (that is, permanent inhabitants,) at the time the constitution was adopted, were made citizens by it. And this clause, describing those eligible to the office of president, implies the same thing. This is evident; for it speaks of those who were "citizens of the *United States* at the time of the adoption of the constitution." Now there clearly could have been no "citizens of the United States, at the time of the adoption of the constitution," unless they were made so by the constitution itself; for there were *no* "citizens of the *United States*" *before* the adoption of the constitution. The Confederation had no citizens. It was a mere league between the state governments. The separate states belonging to the confederacy had each their own citizens respectively. But the confederation itself, as such, had no citizens. There were, therefore, no "citizens of the United States," (but only citizens of the respective states,) before the adoption of the constitution.—Yet this clause asserts that immediately on the adoption, or "at the time of the adoption of this constitution," there *were* "citizens of the United States." Those, then, who were "citizens of the United States at the time of the adoption of the constitution," were necessarily those, and only those, who had been made so by the adoption of the constitution; because they could have become citizens at that pre-

cise "time" in no other way. If, then, any persons were made citizens by the adoption of the constitution, who were the *individuals* that were thus made citizens? They were "the people of the United States," of course—as the preamble to the constitution virtually asserts. And if "the people of the United States" were made citizens by the adoption of the constitution, then *all* "the people of the United States" were necessarily made citizens by it—for no discrimination is made by the constitution between different individuals, "people of the United States"—and there is therefore no means of determining who were made citizens by the adoption of the constitution, unless *all* "the people of the United States" were so made. Any "person," then, who was one of "the people of the United States" "at the time of the adoption of this constitution," and who is thirty-five years old, and has resided fourteen years within the United States, is eligible to the office of president of the United States. And if every such person be eligible, under the constitution, to the office of president of the United States, the constitution certainly does not recognize them as slaves.

The other class of citizens, mentioned as being eligible to the office of president, consists of the "natural born citizens." Here is an implied assertion that *natural birth* in the country gives the right of citizenship. And if it gives it to one, it necessarily gives it to all—for no discrimination is made; and if all persons, born in the country, are not entitled to citizenship, the constitution has given us no test by which to determine who of them are entitled to it.

Every person, then, born in the country, and that shall have attained the age of thirty-five years, and been fourteen years a resident within the United States, is eligible to the office of president. And if eligible to that office, the constitution certainly does not recognize him as a slave.

Persons, who are "citizens" of the United States, according to the foregoing definitions, are also eligible to the offices of representative and senator of the United States; and therefore cannot be slaves.

Ninth. The constitution declares that "the trial of all crimes, except in cases of impeachment, shall be *by jury.*"—Also that "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

It is obvious that slaves, if we had any, might "levy war against the United States," and might also "adhere to their enemies, giving them aid and comfort." It may, however, be doubted whether they could commit the crime of treason—for treason implies a breach of fidelity, trust or allegiance, where fidelity, trust or allegiance is due. And it is very clear that slaves could owe allegiance, trust or fidelity, neither to the United States, nor to the state governments; for allegiance is due to a government only from those who are protected by it. Slaves could owe to our governments nothing but resistance and destruction. If therefore they were to levy war against the United States, they might not perhaps be liable to the technical charge of treason; although there would, in reality, be as much treason in their act, as there would of any other crime—for there would, in truth, be neither legal nor moral crime of any kind in it. Still, the government would be compelled, in order to protect itself against them, to charge them with some crime or other—treason, murder, or something else. And this charge, whatever it might be, would have to be tried by a jury. And what (in criminal cases,) is the "trial by jury?" It is a trial, both of the law and the fact, by the "peers," or equals, of the person tried. Who are the "peers" of a slave? None, evidently, but slaves. If, then, the constitution recognizes any such class of persons, in this country, as slaves, it would follow that for any crime committed by them against the United States, they must be tried, both on the law and the facts, by a jury of slaves. The result of such trials we can readily imagine.

Does this look as if the constitution guarantied, or even recognized the legality of slavery.

Tenth. The constitution declares that "The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

The privilege of this writ, wherever it is allowed, is of itself sufficient to make slavery impossible and illegal. The object and prerogative of this writ are to secure to all persons their natural right to personal liberty, against all restraint except from the government; and even against restraints by the government itself, unless they are imposed in conformity with established general laws, and upon the charge of some legal offence or liability. It accordingly liberates all who are held in custody against their will, (whether by individuals or the government,) unless they are held *on some formal writ or process, authorized by law, issued by the government, according to established principles, and charging the person held by it with some legal offence or liability.* The principle of the writ seems to be, that no one shall be restrained of his natural liberty, unless these three things conspire; 1st, that the restraint be imposed by *special command of the government;* 2d, that there be a general law authorizing restraints for specific causes; and, 3d, that the government, previously to issuing process for restraining any particular individual, shall itself, by its proper authorities, take express cognizance of, and inquire cautiously into the facts of each case, and ascertain, by reasonable evidence, that the individual has brought himself within the liabilities of the general law. All these things the writ of *habeas corpus* secures to be done, before it will suffer a man to be restrained of his liberty; for the writ is a mandate to the person holding another in custody, commanding him to bring his prisoner before the court, and show the authority by which it holds him. Unless he then exhibit a legal precept, warrant or writ, issued by, and bearing the seal of the government, specifying a legal ground for restraining the prisoner, and authorizing or requiring him to hold him in custody, he will be ordered to

let him go free. Hence all the keepers of prisons, in order to hold their prisoners against the authority of this writ, are required, in the case of each prisoner, to have a written precept or order, bearing the seal of the government, and issued by the proper authority, particularly describing the prisoner by name or otherwise, and setting forth the legal grounds of his imprisonment, and requiring the keeper of the prison to hold him in his custody.

Now the master does not hold his slave in custody by virtue of any formal or legal writ or process, either authorized by law, or issued by the government, or that charges the slave with any legal offence or liability. A slave is incapable of incurring any legal liability, or obligation to his master. And the government could, with no more consistency, grant a writ or process to the master, to enable him to hold his slave, than it could to enable him to hold his horse. It simply recognizes his right of property in his slave, and then leaves him at liberty to hold him by brute force, if he can, as he holds his ox, or his horse—and not otherwise. If the slave escape, or refuse to labor, the slave code no more authorizes the government to issue legal process against the slave, to authorize the master to catch him, or compel him to labor, than it does against a horse for the same purpose.—The slave is held simply as property, by individual force, without legal process. But the writ of *habeas corpus* acknowledges no such principle as the right of property in man. If it did, it would be perfectly impotent in all cases whatsoever; because it is a principle of law, in regard to property, that simple possession is *prima facie* evidence of ownership; and therefore any man, who was holding another in custody, could defeat the writ by pleading that he owned his prisoner, and by giving, as proof of ownership, the simple fact that he was in possession of him. If, therefore, the writ of *habeas corpus* did not, of itself, involve a denial of the right of property in man, the fact stated in it, that one man was holding another in custody, would be *prima facie* evidence that

he owned him, and had a right to hold him; and the writ would therefore carry an absurdity in its face.

The writ of *habeas corpus*, then, *necessarily* denies the right of property in man. And the constitution, by declaring, without any discrimination of persons, that "the privilege of this writ shall not be suspended,"—that is, shall not be denied to any human being—has declared that, under the constitution, there can be no right of property in man.

This writ was unquestionably intended as a great constitutional guaranty of personal liberty. But unless it denies the right of property in man, it in reality affords no protection to any of us against being made slaves. If it does deny the right of property in man, the slave is entitled to the privilege of the writ; for he is held in custody by his master, simply on the ground of property.

Mr. Christian, one of Blackstone's editors, says that it is this writ that makes slavery impossible in England. It was on this writ, that Somerset was liberated. The writ, in fact, asserts, as a great constitutional principle, the natural right of personal liberty. And the privilege of the writ is not confined to citizens, but extends to all human beings.* And it is probably the only absolute guaranty, that our national constitution gives to foreigners and aliens, that they shall not, on their arrival here, be enslaved by those of our state governments that exhibit such propensities for enslaving their fellowmen. For this purpose, it is a perfect guaranty to people who come here from any part of the world. And if it be such a guaranty to foreigners and aliens, is it no guaranty to those born under the constitution? Especially when the constitution makes no discrimination of persons?

Eleventh. "The United States shall guaranty to every state in this union a republican form of government, and

* Somerset was not a citizen of England, or entitled, as such, to the protection of the English law. The privilege of the writ of *habeas corpus* was granted to him on the ground simply of his being a man.

shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence."

Mark the strength and explicitness of the first clause of this section, to wit, "The United States *shall guarantee* to every state in this union a republican form of government." Mark also especially that this guaranty is one of liberty, and not of slavery.

We have all of us heretofore been compelled to hear, from individuals of slaveholding principles, many arrogant and bombastic assertions, touching the constitutional "*guaranties*" given to *slavery*; and persons, who are in the habit of taking their constitutional law from other men's mouths, instead of looking at the constitution for themselves, have probably been led to imagine that the constitution had really given such guaranties in some explicit and tangible form. We have, nevertheless, seen that all those pretended guaranties are at most nothing but certain vague hints, insinuations, ciphers and innuendoes, that are imagined to be covered up under language which legally means nothing of the kind. But, in the clause now cited, we do have an explicit and peremptory "guaranty," depending upon no implications, inferences or conjectures, and couched in no uncertain or ambiguous terms. And what is this guaranty? Is it a guaranty of slavery? No. It is a guaranty of something flatly incompatible with slavery: a guaranty of "a republican form of government to every state in this union."

And what is "a republican form of government?" It is where the government is a commonwealth—the property of the public, of the mass of the people, or of the entire people. It is where the government is made up of, and controlled by the combined will and power of the public, or the mass of the people—and where, of natural consequence, it will have, for its object, the protection of the rights of all. It is indispensable to a republican form of government, that the public,

the mass of the people, if not the entire people, participate in the grant of powers to the government, and in the protection afforded by the government. It is impossible, therefore, that a government, under which any considerable number of the people, (if indeed any number of the people,) are disfranchised and enslaved, can be a republic. A slave government is an oligarchy; and one too of the most arbitrary and criminal character.

Strange that men, who have eyes capable of discovering in the constitution so many covert, implied and insinuated guaranties of crime and slavery, should be blind to the legal import of so open, explicit and peremptory a guaranty of freedom, equality and right.

Even if there had really been, in the constitution, two such contradictory guaranties, as one of liberty or republicanism in every state of the Union, and another of slavery in every state where one portion of the people might succeed in enslaving the rest, one of these guaranties must have given way to the other—for, being plainly inconsistent with each other, they could not have stood together. And it might safely have been left either to legal or to moral rules to determine which of the two should prevail—whether a provision to perpetuate slavery should triumph over a guaranty of freedom.

But it is constantly asserted, in substance, that there is "*no propriety*" in the general government's interfering in the local governments of the states. Those who make this assertion appear to regard a state as a single individual, capable of managing his own affairs, and of course unwilling to tolerate the intermeddling of others. But a state is not an individual. It is made up of large numbers of individuals, each and all of whom, amid the intestine mutations and strifes to which states are subject, are liable, at some time or other, to be trampled upon by the strongest party, and may therefore reasonably choose to secure, in advance, some external protection against such emergencies, by making reciprocal

contracts with other people similarly exposed in the neighboring states. Such contracts for mutual succor and protection, are perfectly fit and proper for any people who are so situated as to be able to contribute to each other's security. They are as fit and proper as any other political contracts whatever; and are founded on precisely the same principle of combination for mutual defence—for what are any of our political contracts and forms of government, but contracts between man and man for mutual protection against those who may conspire to injure either or all of them? But these contracts, fit and proper between all men, are peculiarly appropriate to those, who, while they are members of various local and subordinate associations, are, at the same time, united for specific purposes, under one general government. Such a mutual contract, between the people of all the states, is contained in this clause of the constitution. And it gives to them all an additional guaranty for their liberties.

Those who object to this guaranty, however, choose to overlook all these considerations, and then appear to imagine that their notions of "propriety" on this point, can effectually expunge the guaranty itself from the constitution. In indulging this fancy, however, they undoubtedly overrate the legal, and perhaps also the moral effect of such superlative fastidiousness; for even if there were "*no propriety*" in the interference of the general government to maintain a republican form of government in the states, still, the unequivocal pledge to that effect, given in the constitution, would nevertheless remain an irresistible rebutter to the allegation that the constitution intended to guaranty its opposite, slavery, an oligarchy, or a despotism. It would, therefore, entirely forbid all those inferences and implications, drawn by slaveholders, from those other phrases, which they quote as guaranties of slavery.*

* From whom come these objections to the "propriety" of the general government's interfering to maintain republicanism in the states? Do they not come from those who have ever hitherto claimed that the general government was bound to

But the "propriety," and not only the propriety, but the necessity of this guaranty, may be maintained on still other grounds.

One of these grounds is, that it would be impossible, consistently with the other provisions of the constitution, that the general government itself could be republican, unless the state governments were republican also. For example. The constitution provides, in regard to the choice of congressional representatives, that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." It was indispensable to the internal quiet of each state, that the same body of electors, who should participate in the suffrage of the state governments, should participate also in the suffrage of the national one—and *vice versa*, that those who should participate in the national suffrage, should also participate in that of the state. If the general and state constitutions had each a different body of electors within each state, it would obviously give rise at once to implacable and irreconcilable feuds, that would result in the overthrow of one or the other of the governments within the state. Harmony or inveterate conflict was the only alternative. As conflict would necessarily result in the destruction of one of the governments, harmony was the only mode by which both could be preserved. And this harmony could be secured only by giving to the same body of electors, suffrage in both the governments.

If, then, it was indispensable to the existence and authority of both governments, within the territory of each state, that the same body, and only the same body of electors, that were

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interfere to *put down republicanism*? And that those who were *republicans* at the north, might with perfect "propriety" and consistency, pledge their assistance to the despots of the south, to sustain the worst, the meanest and most atrocious of tyrannies? Yes, from the very same. To interfere to assist one half of the people of a state in the cowardly, cruel and fiendish work of crushing the other half into the earth, corresponds precisely with their chivalrous notions of "propriety;" but it is insufferable officiousness for them to form any political compacts that will require them to interfere to protect the weak against the tyranny of the strong, or to maintain justice, liberty, peace and freedom.

represented in one of the governments, should be represented in the other, it was clearly indispensable, in order that the national one should be republican, that the state governments should be republican also. Hence the interest which the nation at large have in the republicanism of each of the state governments.

It being necessary that the suffrage under the national government, within each state, should be the same as for the state government, it is apparent that unless the several state governments were all formed on one general plan, or unless the electors of all the states were united in the acknowledgement of some general controlling principle, applicable to both governments, it would be impossible that they could unite in the maintenance of a general government that should act in harmony with the state governments; because the same body of electors, that should support a despotic government in the state, could not consistently or cordially unite, or even unite at all, in the support of a republican government for the nation. If one portion of the state governments should be republican, like Vermont, where suffrage is open to all—and another portion should be oligarchies, like South Carolina, and the other slave states—another portion limited monarchies, like England—another portion ecclesiastical, like that of the Pope of Rome, or that of the ancient Jews—and another portion absolute despotisms, like that of Nicholas, in Russia, or that of Francia, in Paraguay,—and the same body, and only the same body, of electors, that sustained each of these governments at home, should be represented in the national government, each state would send into the national legislature the representatives of its own peculiar system of government; and the national legislature, instead of being composed of the representatives of any one theory, or principle of government, would be made up of the representatives of all the various theories of government that prevailed in the different states—from the extreme of democracy to the extreme of despotism. And each of these various representatives would be obliged to carry his local principles into the national

legislature, else he could not retain the confidence of his peculiar constitutents. The consequence would be, that the national legislature would present the spectacle of a perfect Babel of discordant tongues, elements, passions, interests and purposes, instead of an assembly united for the accomplishment of any agreed or distinct object.

Without some distinct and agreed object as a bond of union, it would obviously be impracticable for any general union of the whole people to subsist; and that bond of union, whatever it be, must also harmonize with the principles of each of the state governments, else there would be a collision between the general and state governments.

Now the great bond of union, agreed upon in the general government, was "the rights of man"—expressed in the national constitution by the terms "liberty and justice." What other bond could have been agreed upon? On what other principle of government could they all have united? Could they have united to sustain the divine right of kings? The feudal privileges of nobles? Or the supremacy of the Christian, Mahometan, or any other church? No. They all denied the divine right of kings, and the feudal rights of nobles; and they were of all creeds in religion. But they were agreed that all men had certain natural, inherent, essential and inalienable rights, among which were life, liberty and the pursuit of happiness; and that the preservation of these rights was the legitimate purpose of governments among men. They had avowed this principle before the world, had fought for it, and successfully defended it, against the mightiest power in the world. They had filled the world with its glory; and it, in turn, had filled the world with theirs. It had also gathered, and was then gathering, choice spirits, and large numbers of the oppressed from other nations unto them. And this principle—in which were involved the safety, interests and rights of each and every one of "the people," who were to unite for the formation of the government—now furnished a bond of union, that was at once

sufficient, legitimate, consistent, honorable, of universal application, and having more general power over the hearts and heads of all of them, than any other that could be found to hold them together. It comported with their theory of the true objects of government. This principle, therefore, they adopted as the corner-stone of their national government; and, as a matter of necessity, all other things, on which this new government was in any degree to depend, or which was to depend in any degree upon this government, were then made to confirm to this principle. Hence the propriety of the power given to the general government, of "guaranteeing to every state in the Union a republican form of government." Had not this power been given to the general government, the majorities in each state might have converted the state governments into oligarchies, aristocracies, monarchies or despotisms, that should not only have trampled upon the minorities, and defeated their enjoyment of the national constitution, but also introduced such factions and feuds into the national governments, as would have distracted its councils, and prostrated its power.

But there were also motives of a pecuniary and social, as well as political nature, that made it proper that the nation should guarantee to the states a republican form of government.

Commerce was to be established between the people of the different states. The commerce of a free people is many times more valuable than that of slaves. Freemen produce and consume vastly more than slaves. They have therefore more to buy and more to sell. Hence the free states have a direct pecuniary interest in the civil freedom of all the other states. Commerce between free and slave states is not reciprocal or equal. Who can measure the increase that would have been made to the industry and prosperity of the free states, if all the slaves in the country had been freemen, with all the wants and energies of freemen? And their masters had had all the thrift, industry, frugality and enterprise of

men who depend upon their own labor, instead of the labor of slaves, for their prosperity? Great Britain thought it policy to carry on a seven years' war against us principally to secure to herself the control and benefits of the commerce of three millions of people and their posterity. But we now have nearly or quite the same number of slaves within our borders, and yet we think that commerce with them and their posterity is a matter with which we have no concern; that there is "*no propriety*" in that provision of the national constitution, which requires that the general government—which we have invested with the exclusive control of all commerce among the several states—should secure to these three millions the right of traffic with their fellow men, and to their fellow men the right of traffic with them, against the impertinent usurpations and tyranny of subordinate governments, that have no constitutional right to interfere in the matter.

Again. The slave states, in proportion to their population, contribute nothing like an equal or equitable share to the aggregate of national wealth. It would probably be within the truth to say that, in proportion to numbers, the people of the free states have contributed ten times as much to the national wealth as the people of the slave states. Even for such wealth as the culture of their great staple, cotton, has added to the nation, the south are indebted principally, if not entirely, to the inventive genius of a single northern man.* The agriculture of the slave states is carried on with rude and clumsy implements; by listless, spiritless and thriftless laborers; and in a manner speedily to wear out the natural fertility of the soil, which fertility slave cultivation seldom or never replaces. The mechanic arts are comparatively dead among them. Invention is utterly dormant. It is doubtful whether either a slave or a slave holder has ever invented a single important article of labor-saving machinery since the

* Eli Whitney.

foundation of the government. And they have hardly had the skill or enterprise to apply any of those invented by others. Who can estimate the loss of wealth to the nation from these causes alone? Yet we of the free states give to the south a share in the incalculable wealth produced by our inventions and labor-saving machinery, our steam engines, and cotton gins, and manufacturing machinery of all sorts, and yet say at the same time that we have no interest, and that there is "no propriety" in the constitutional guaranty of that personal freedom to the people of the south, which would enable them to return us some equivalent in kind.

For the want, too, of an enforcement of this guaranty of a republican form of government to each of the states, the population of the country, by the immigration of foreigners, has no doubt been greatly hindered. Multitudes almost innumerable, who would have come here, either from a love of liberty, or to better their conditions, and given the country the benefit of their talents, industry and wealth, have no doubt been dissuaded or deterred by the hideous tyranny that rides triumphant in one half of the nation, and extends its pestiferous and detested influence over the other half.

Socially, also, we have an interest in the freedom of all the states. We have an interest in free personal intercourse with all the people living under a common government with ourselves. We wish to be free to discuss, with any and all of them, all the principles of liberty and all the interests of humanity. We wish, when we meet a fellow man, to be at liberty to speak freely with him of his and our condition; to be at liberty to do him a service; to advise with him as to the means of improving his condition; and, if need be, to ask a kindness at his hands. But all these things are incompatible with slavery. Is this such an union as we bargained for? Was it "nominated in the bond," that we should be cut off from these the common rights of human nature? If so, point to the line and letter, where it is so written. Neither of them are to be found. But the contra-

ry *is* expressly guarantied against the power of both the governments, state and national; for the national government is prohibited from passing any law abridging the freedom of speech and the press, and the state governments are prohibited from maintaining any other than a republican form of government, which of course implies the same freedom.

The nation at large have still another interest in the republicanism of each of the states; an interest, too, that is indicated in the same section in which this republicanism is guarantied. This interest results from the fact that the nation are pledged to "protect" each of the states "against domestic violence." Was there no account taken—in reference either to the cost or the principle of this undertaking—as to what might be the character of the state governments, which we are thus pledged to defend against the risings of the people? Did we covenant, in this clause, to wage war against the rights of man? Did we pledge ourselves that those, however few, who might ever succeed in getting the government of a state into their hands, should thenceforth be recognized as the legitimate power of the state, and be entitled to the whole force of the general government to aid them in subjecting the remainder of the people to the degradation and injustice of slavery? Or did the nation undertake only to guarantee the preservation of "a republican form of government" against the violence of those who might prove its enemies? The reason of the thing, and the connexion, in which the two provisions stand in the constitution, give the answer.

We have yet another interest still, and that no trivial one, in the republicanism of the state governments; an interest indicated, too, like the one last mentioned, in the very section in which this republicanism is assured. It relates to the defence against invasion. The general government is pledged to defend each of the states against invasion. Is it a thing of no moment, whether we have given such a pledge to free or to slave states? Is there no difference in the cost and hazard of defending one or the other? Is it of no consequence

to the expense of life and money, involved in this undertaking, whether the people of the state invaded shall be united, as freemen naturally will be, as one man against the enemy? Or whether, as in slave states, half of them shall be burning to join the enemy, with the purpose of satisfying with blood the long account of wrong that shall have accrued against their oppressors? Did Massachusetts—who during the war of the revolution furnished more men for the common defence, than all the six southern states together—did she, immediately on the close of that war, pledge herself, as the slave holders would have it, that she would lavish her life in like manner again, for the defence of those whose wickedness and tyranny in peace should necessarily multiply their enemies and make them defenceless in war? If so, on what principle, or for what equivalent, did she do it? Did she not rather take care that the guaranty for a republican government should be inserted in the same paragraph with that for protection against invasion, in order that both the principle and the extent of the liability she incurred, might distinctly appear?

The nation at large, then, as a political community under the constitution, have both interests and rights, and both of the most vital character, in the republicanism of each of the state governments. The guaranty given by the national constitution, securing such a government to each of the states, is therefore neither officious nor impertinent. On the contrary, this guaranty was a *sine qua non* to any national contract of union; and the enforcement of it is equally indispensable, if not to the continuance of the union at all, certainly to its continuance on any terms that are either safe, honorable or equitable for the north.

This guaranty, then, is not idle verbiage. It is full of meaning. And that meaning is not only fatal to slavery itself, but it is fatal also to all those pretences, constructions, surmises and implications, by which it is claimed that the national constitution sanctions, legalizes, or even tolerates slavery.

CHAPTER IX.

THE INTENTIONS OF THE CONVENTION.

THE intentions of the framers of the constitution, (if we could have, as we cannot, any *legal* knowledge of them, except from the words of the constitution,) have nothing to do with fixing the legal meaning of the constitution. That convention were not delegated to adopt or establish a constitution; but only to consult, devise and recommend. The instrument, when it came from their hands, was a mere proposal, having no legal force or authority. It finally derived all its validity and obligation, as a frame of government, from its adoption by the people at large.* Of course the intentions of the people at large are the only ones, that are of any importance to be regarded in determining the legal meaning of the instrument. And their intentions are to be gathered entirely from the words, which they adopted to express them. And their intentions must be presumed to be just what, and only what the words of the instrument *legally* express. In adopting the constitution, the people acted as legislators, in the highest sense in which that word can be applied to human lawgivers. They were establishing a law that was to govern both themselves and their government. And their intentions, like those of other legislators, are to be gathered from the words of their enactments. Such is the dic-

* The Supreme Court say, "The instrument, when it came from their hands, (that is, the hands of the convention,) was a mere proposal, without obligation or pretension to it." "The people were at perfect liberty to accept or reject it; and their act was final."—*M'Culloch* vs. *Maryland*,—4 *Wheaton* 403-4.

tate of both law and common sense.* The instrument had been reported by their committee, the convention. But the people did not ask this committee what was the legal meaning of the instrument reported. They adopted it, judging for themselves of its legal meaning, as any other legislative body would have done. The people at large had not even an opportunity of consultation with the members of the convention, to ascertain their opinions. And even if they had consulted them, they would not have been bound at all by their opinions. But being unable to consult them, they were compelled to adopt or reject the instrument, on their own judgment of its meaning, without any reference to the opinions of the convention. The instrument, therefore, is now to be regarded as expressing the intentions of the people at large; and not the intentions of the convention, if the convention had any intentions differing from the meaning which the law gives to the words of the instrument.

But why do the partizans of slavery resort to the debates of the convention for evidence that the constitution sanctions slavery? Plainly for no other reason than because the words of the instrument do not sanction it. But can the intentions of that convention, attested only by a mere skeleton of its debates, and not by any impress upon the instrument itself, add any thing to the words, or to the legal meaning of the words of the constitution? Plainly not. Their intentions are of no more consequence, in a legal point of view, than the intentions of any other equal number of the then voters of the country. Besides, as members of the convention, they were not even parties to the instrument; and no evidence of their intentions, at *that* time, is applicable to the case. They became parties to it only by joining with the rest of the people in its subsequent adoption; and they themselves,

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*The Supreme Court of the United States say:

"The intention of the instrument must prevail: *this intention must be collected from its words.*"—*Ogden* vs. *Saunders*,—12 *Wheaton*, 332.

The intention of the legislature is to be searched for in the words which the legislature has employed to convey it."—*Schr. Paulina's Cargo* vs. *United States*,—7 *Cranch*, 60.

equally with the rest of the people, must then be presumed to have adopted its legal meaning, and that alone—notwithstanding any thing they may have previously said. What absurdity then is it to set up the opinions expressed in the convention, and by a few only of its members, in opposition to the opinions expressed by the whole people of the country, in the constitution itself.

But notwithstanding the opinions expressed in the convention by some of the members, we are bound, as a matter of law, to presume that the convention itself, in the aggregate, had no intention of sanctioning slavery—and why? Because, after all their debates, they agreed upon an instrument that did not sanction it. This was confessedly the result in which all their debates terminated. This instrument is also the *only* authentic evidence of their intentions. It is subsequent in its date to all the other evidence. It comes to us, also, as none of the other evidence does, ***signed with their own hands.*** And is this to be set aside, and the constitution itself to be impeached and destroyed, and free government overturned, on the authority of a few meagre snatches of argument, intent or opinion, uttered by a few only of the members; jotted down by one of them, (Mr. Madison,) merely for his own convenience, or from the suggestions of his own mind; and only reported to us fifty years afterwards by a posthumous publication of his papers? If any thing could excite the utter contempt of the people of this nation for the miserable subterfuges, to which the advocates of slavery resort, it would seem that their offering such evidence as this in support of their cause, must do it. And yet these, and such as these mere fragments of evidence, all utterly inadmissible and worthless in their kind, for any legal purpose, constitute the warp and the woof, the very *sine qua non* of the whole argument for slavery.

Did Mr. Madison, when he took his oath of office, as president of the United States, swear to support these scraps of debate, which he had filed away among his private papers?—

Or did he swear to support that written instrument, which the people of the country had agreed to, and which was known to them, and to all the world, as the constitution of the United States.*

But even if the unexpressed intentions, which these notes of debate ascribe to certain members, had been participated in by the whole convention, we should have had no right to hold the people of the country at large responsible for them. *This convention sat with closed doors*, and it was not until

* "Elliot's Debates," so often referred to, are, if possible, a more miserable authority than Mr. Madison's notes. He seems to have picked up the most of them from the newspapers of the day, in which they were reported by nobody now probably knows whom. In his preface to his first volume, containing the debates in the Massachusetts and New York conventions, he says:

"In the compilation of this volume, care has been taken to search into contemporary publications, in order to make the work as perfect as possible; still, however, the editor is sensible, from the daily experience of newspaper reports, of the present time, that the sentiments they contain may, in some instances, have been inaccurately taken down, and in others, probably too faintly sketched, fully to gratify the inquisitive politician." He also speaks of them as "rescued from the ephemeral prints of that day, and now, for the first time, presented in a uniform and durable form."

In the preface to his second volume, which is devoted to the Virginia convention, he says the debates were reported by an able stenographer, David Robertson; and then quotes the following from Mr. Wirt, in a note to the life of Patrick Henry:

"From the skill and ability of the reporter, there can be no doubt that the substance of the debates, as well as their general course, are accurately preserved."

In his preface to the third volume, embracing the North Carolina and Pennsylvania conventions, he says:

"The *first* of the two North Carolina conventions is contained in this volume; the *second* convention, it is believed, *was neither systematically reported nor printed.*" "The debates in the Pennsylvania convention, that have been preserved, it appears, *are on one side only;* a search into the contemporary publications of the day, has been unsuccessful to furnish us with the other side of the question."

In his preface to the fourth volume, he says:

"In compiling the opinions, on constitutional questions, delivered in congress, by some of the most enlightened senators and representatives, the files of the New York and Philadelphia newspapers, from 1789 to 1800, had to be relied on; from the latter period to the present, the National Intelligencer is the authority consulted for the desired information."

It is from such stuff as this, collected and published thirty-five and forty years after the constitution was adopted—stuff very suitable for constitutional dreams to be made of—that our courts and people now make their constitutional law, in preference to adopting the law of the constitution itself. In this way they manufacture law strong enough to bind three millions of men in slavery.

near fifty years after the people had adopted the constitution itself, that these private intentions of the framers authentically transpired. And even now all the evidence disclosed implicates, *directly and absolutely*, but few of the members—not even all from the slaveholding states. The intentions of all the rest, we have a right to presume, concurred with their votes and the words of the instrument; and they had therefore no occasion to express contrary ones in debate.

But suppose that *all* the members of the convention had participated in these intentions—what then? Any forty or fifty men, like those who framed the constitution, may now secretly concoct another, that is honest in its terms, and yet in secret conclave confess to each other the criminal objects they intend to accomplish by it, if its honest character should enable them to secure for it the adoption of the people.—But if the people should adopt such constitution, would they thereby adopt any of the criminal and secret purposes of its authors? Or if the guilty confessions of these conspirators should be revealed fifty years afterwards, would judicial tribunals look to them as giving the government any authority for violating the legal meaning of the words of such constitution, and for so construing them as to subserve the criminal and shameless purposes of its originators?

The members of the convention, as such, were the mere scriveners of the constitution; and their individual purposes, opinions or expressions, then uttered in secret cabal, though now revealed, can no more be evidence of the intentions of the people who adopted the constitution, than the secret opinions or expressions of the scriveners of any other contract can be offered to prove the intentions of the true parties to such contract. As framers of the constitution, the members of the convention gave to it no validity, meaning, or legal force. They simply drafted it, and offered it, such as it legally might be, to the people for their adoption or rejection. The people, therefore, in adopting it, had no reference whatever to the opinions of the convention. They had no au-

thentic evidence of what those opinions were. They looked simply at the instrument. And they adopted even its legal meaning by a bare majority. If the instrument had contained any tangible sanction of slavery, the people would sooner have had it burned by the hands of the common hangman, than they would have adopted it, and thus sold themselves as pimps to slavery, covered as they were with the scars they had received in fighting the battles of freedom. And the members of the convention knew that such was the feeling of a large portion of the people; and for that reason, if for no other, they dared insert in the instrument no legal sanction of slavery. They chose rather to trust to their craft and influence to corrupt the government, (of which they themselves expected to be important members,) after the constitution should have been adopted, rather than ask the necessary authority directly from the people. And the success they have had in corrupting the government, proves that they judged rightly in presuming that the government would be more flexible than the people.

For other reasons, too, the people should not be charged with designing to sanction any of the secret intentions of the convention. When the states sent delegates to the convention, no avowal was made of any intention to give any national sanction to slavery. The articles of confederation had had given none; the then existing state constitutions gave none; and it could not have been reasonably anticipated by the people that any would have been either asked for or granted in the new constitution. If such a purpose had been avowed by those who were at the bottom of the movement, the convention would doubtless never have been held. The avowed objects of the convention were of a totally different character. Commercial, industrial and defensive motives were the prominent ones avowed. When, then, the constitution came from the hands of such a convention, unstained with any legal or tangible sanction of slavery, were the people—who, from the nature of the case, could not assemble to

draft one for themselves—bound either to discard it, or hold themselves responsible for all the secret intentions of those who had drafted it? Had they no power to adopt its legal meaning, and that alone! Unquestionably they had the power; and, as matter of law, as well as fact, it is equally unquestionable that they exercised it. Nothing else than the constitution, as a legal instrument, was offered to them for their adoption. Nothing else was legally before them that they could adopt. Nothing else, therefore, did they adopt.

This alleged design, on the part of the convention, to sanction slavery, is obviously of no consequence whatever, unless it can be transferred to the people who adopted the constitution. Has any such transfer ever been shown? Nothing of the kind. It may have been known among politicians; and may have found its way into some of the state conventions. But there probably is not a little of evidence in existence, that it was generally known among the mass of the people. And, in the nature of things, it was nearly impossible that it should have been known by them. The national convention had sat with closed doors. Nothing was known of their discussions, except what was personally reported by the members. Even the discussions in the *state* conventions could not have been known to the people at large; certainly not until after the constitution had been ratified by those conventions. The ratification of the instrument, by those conventions, followed close on the heels of their discussions.—The population meanwhile was thinly scattered over the country. The public papers were few, and small, and far between. They could not even make such reports of the discussions of public bodies, as newspapers now do. The consequence must have been that the people at large knew nothing of the intentions of the framers of the constitution, but from its words, until after it was adopted. Nevertheless, it is to be constantly borne in mind, that even if the people had been fully cognizant of those intentions, they would not therefore have adopted them, or become at all responsible for them, so

long as the intentions themselves were not incorporated in the instrument. Many selfish, ambitious and criminal purposes, not expressed in the constitution, were undoubtedly intended to be accomplished by one and another of the thousands of unprincipled politicians, that would naturally swarm around the birth-place, and assist at the nativity of a new and splendid government. But the people are not therefore responsible for those purposes; nor are those purposes, therefore, a part of the constitution; nor is its language to be construed with any view to aid their accomplishment.

But even if the people intended to sanction slavery by adopting the intentions of the convention, it is obvious that they, like the convention, intended to use no language that should legally convey that meaning, or that should necessarily convict them of that intention in the eyes of the world.—They, at least, had enough of virtuous shame to induce them to conceal this intention under the cover of language, whose legal meaning would enable them always to aver,

"Thou canst not say I did it."

The intention, therefore, that the judiciary should construe certain language into an authority for slavery, when such is not the legal meaning of the language itself, cannot be ascribed to the people, except upon the supposition that the people presumed their judicial tribunals would have so much less of shame than they themselves, as to *volunteer* to carry out these their secret wishes, by going beyond the words of the constitution they should be sworn to support, and violating all legal rules of construction, and all the free principles of the instrument. It is true that the judiciary, (whether the people intended it or not,) have proved themselves to be thus much, at least, more shameless than the people, or the convention. Yet that is not what ought to have been expected of judicial tribunals. And whether such were really the intention of the convention, or the people, is, at least a matter of conjecture and history, and not of law, nor of any evidence cognizable by any judicial tribunal.

Why should we search at all for the intentions, either of the convention, or of the people, beyond the words which both the convention and the people have agreed upon to express them? What is the object of written constitutions, and written statutes, and written contracts? Is it not that the meaning of those who make them may be known with the most absolute precision of which language is capable? Is it not to get rid of all the fraud, and uncertainty, and disagreements of oral testimony? Where would be our constitution, if, instead of its being a written instrument, it had been merely agreed upon orally by the members of the convention? And by them only orally reported to the people? And only this oral report of it had been adopted by the people? And all our evidence of what it really was, had rested upon reports of what Mr. A, and Mr. B, members of the convention, had been heard to say? Or upon Mr. Madison's notes of the debates of the convention? Or upon the oral reports made by the several members to their respective constituents, or to the respective state conventions? Or upon flying reports of the opinions which a few individuals, out of the whole body of the people, had formed of it when they adopted it? No two of the members of the convention would probably have agreed in their representations of what the constitution really was. No two of the people would have agreed in their understanding of the constitution when they adopted it. And the consequence would have been that we should really have had no constitution at all. Yet there is as much ground, both in reason and in law, for thus throwing aside the *whole* of the written instrument, and trusting entirely to these other sources for evidence of what any part of the constitution really is, as there is for throwing aside those particular portions of the written instrument, which bear on slavery, and attempting to supply their place from such evidence as these other sources may chance to furnish. And yet, to throw aside the written instrument, so far as its provisions are prohibitory of slavery, and make a new constitution on that point, out of other testimony, is the only means,

confessedly the only means, by which slavery can be made constitutional.

And what is the object of resorting to these flying reports for evidence, on which to change the meaning of the constitution? Is it to change the instrument from a dishonest to an honest one? from an unjust to a just one? No. But directly the reverse—and solely that dishonesty and injustice may be carried into effect. A purpose, for which no evidence of any kind whatever could be admitted in a court of justice.

Again. If the principle be admitted, that the meaning of the constitution can be changed, on proof being made that the scriveners or framers of it had secret and knavish intentions, which do not appear on the face of the instrument, then perfect license is given to the scriveners of constitutions to contrive any secret scheme of villainy they may please, and impose it upon the people as a system of government, under cover of a written instrument that is so plainly honest and just in its terms, that the people readily agree to it. Is such a principle to be admitted in a country where the people claim the prerogative of establishing their own government, and deny the right of any body to impose a government upon them, either by force, or fraud, or against their will?

Finally. The constitution is a contract; a written contract, consisting of a certain number of precise words, to which, and to which only, all the parties to it have, in theory, agreed. Manifestly neither this contract, nor the meaning of its words, can be changed, without the consent of all the parties to it. Nor can it be changed on a representation, to be made by any number of them less than the whole, that they intended any thing different from what they have said. To change it, on the representation of a part, without the consent of the rest, would be a breach of contract as to all the rest. And to change its *legal meaning*, without their consent, would be as much a breach of the contract as to change its words. If there were a single honest man in the nation, who assented, in good faith, to the honest and legal

meaning of the constitution, it would be unjust and unlawful to change the meaning of the instrument so as to sanction slavery, even though every other man in the nation should testify that, in agreeing to the constitution, he intended that slavery should be sanctioned. If there were *not* a single honest man in the nation, who adopted the constitution in good faith, and with the intent that its legal meaning should be carried into effect, its legal meaning would nevertheless remain the same; for no judicial tribunal could lawfully allow the parties to it to come into court and allege their dishonest intentions, and claim that they be substituted for the legal meaning of the words of the instrument.

CHAPTER X.

THE PRACTICE OF THE GOVERNMENT.

The practice of the government, under the constitution, has not altered the legal meaning of the instrument. It means now what it did before it was ratified, when it was first offered to the people for their adoption or rejection. One of the advantages of a written constitution is, that it enables the people to see what its character is before they adopt it; and another is, that it enables them to see, after they have adopted it, whether the government adheres to it, or departs from it. Both these advantages, each of which is indispensable to liberty, would be entirely forfeited, if the legal meaning of a written constitution were one thing when the instrument was offered to the people for their adoption,

and could then be made another thing by the government after the people had adopted it.

It is of no consequence, therefore, what meaning the government *have* placed upon the instrument; but only what meaning they were *bound to place upon it* from the beginning.

The only question, then, to be decided, is, what was the meaning of the constitution; *as a legal instrument*, when it was first drawn up, and presented to the people, and before it was adopted by them?

To this question there certainly can be but one answer.—There is not room for a doubt or an argument, on that point, in favor of slavery. The instrument itself is palpably a free one throughout, in its language, its principles, and all its provisions. As a legal instrument, there is no trace of slavery in it. It not only does not sanction slavery, but it does not even recognize its existence. More than this, it is palpably and wholly incompatible with slavery. It is also the supreme law of the land, in contempt of any state constitution or law that should attempt to establish slavery.

Such was the character of the constitution when it was offered to the people, and before it was adopted. And if such was its character then, such is its character still. It cannot have been changed by all the errors and perversions, intentional or unintentional, of which the government may have since been guilty.

CHAPTER XI.

THE UNDERSTANDING OF THE PEOPLE.

ALTHOUGH the inquiry may be of no legal importance, it may nevertheless be one pertinent to the subject, whether it be matter of *history* even—to say nothing of legal proof—that the *people* of the country did really understand or believe that the constitution sanctioned slavery? Those who make the assertion, are bound to prove it. The presumption is against them. Where is their contrary history?

They will say that a part of the people were actually slaveholders, and that it is unreasonable to suppose they would have agreed to the constitution, if they had understood it to be a free one.

The answer to this argument is, that the actual slaveholders were few in number compared with the whole people; comprising probably not more than one-eighth or one-sixth of the voters, and one-fortieth or one-thirtieth of the whole population. They were so few as to be manifestly incapable of maintaining any separate political organization; or even of holding their slave property, except under the sufferance, toleration and protection of the non-slaveholders. They were compelled, therefore, to agree to any political organization, which the non-slaveholders should determine on. This was at that time the case even in the strongest of the slaveholding states themselves. In all of them, without exception, the slaveholders were either obliged to live, or from choice did live, under free constitutions. They, of course, held their slave property in defiance of their constitutions. They were

enabled to do this through the corrupting influence of their wealth and union. Controlling a large proportion of the wealth of their states, their social and political influence was entirely disproportionate to their numbers. They could act in concert. They could purchase talent by honors, offices and money. Being always united, while the non-slavholders were divided, they could turn the scale in elections, and fill most of the offices with slaveholders. Many of the non-slaveholders doubtless were poor, dependent and subservient, (as large portions of the non-slaveholders are now in the slaveholding states,) and lent themselves to the support of slavery almost from necessity. By these, and probably by many other influences that we cannot now understand, they were enabled to maintain their hold upon their slave property in defiance of their constitutions. It is even possible that the slaveholders themselves did not choose to have the subject of slavery mentioned in their constitutions; that they were so fully conscious of their power to corrupt and control their governments, that they did not regard any constitutional provision necessary for their security; and that out of mere shame at the criminality of the thing, and its inconsistency with all the principles the country had been fighting for and proclaiming, they did not wish it to be named.

But whatever may have been the cause of the fact, the fact itself is conspicuous, that from some cause or other, either with the consent of the slaveholders, or in defiance of their power, the constitutions of every one of the thirteen states were at that time free ones.

Now is it not idle and useless to pretend, when even the strongest slaveholding states had free constitutions—when not one of the separate states, acting for itself, would have any but a free constitution—that the whole thirteen, when acting in unison, should concur in establishing a slaveholding one? The idea is preposterous. The single fact that all the state constitutions were at that time free ones, scatters for ever the pretence that the majority of the people of all the states

either intended to establish, *or could have been induced to establish*, any other than a free one for the nation. Of course it scatters also the pretence that they believed or understood that they were establishing any but a free one.

There very probably may have been a general belief among the people, that slavery would for a while live on, on sufferance; that the government, until the nation should have become attached to the constitution, and cemented and consolidated by the habit of union, would be too weak, and too easily corrupted by the innumerable and powerful appliances of slaveholders, to wrestle with and strangle slavery. But to suppose that the nation at large did not look upon the constitution as designed to destroy slavery, whenever its principles should be carried into full effect, is obviously to suppose an intellectual impossibility; for the instrument was plain, and the people had common sense; and those two facts cannot stand together consistently with the idea that there was any general, or even any considerable misunderstanding of its meaning.

CHAPTER XII.

THE STATE CONSTITUTIONS OF 1845.

Of all the existing state constitutions, (excepting that of Florida, which I have not seen,) not one of them contains provisions that are sufficient, (or that would be sufficient if not restrained by the constitution of the United States,) to authorize the slavery that exists in the states. The material deficiency in all of them is, that they neither designate, nor give the legislatures any authority to designate the persons, who may be made slaves. Without such a provision, all their other provisions in regard to slaves are nugatory, simply because their application is legally unknown. They would apply as well to whites as to blacks, and would as much authorize the enslavement of whites as of blacks.

We have before seen that none of the state constitutions, that were in existence in 1789, recognized slavery at all. Since that time, four of the old thirteen states, viz., Maryland, North Carolina, South Carolina and Georgia, have altered their constitutions so as to make them recognize slavery; yet not so as to provide for any legal designation of the persons to be made slaves.

The constitution of South Carolina has a provision that implies that *some* of the slaves, at least, are "negroes;" but not that all slaves are negroes, nor that all negroes are slaves. The provision, therefore, amounts to nothing for the purposes of a constitutional designation of the persons who may be made slaves.

The constitutions of Tennessee and Louisiana make no direct mention of slaves; and have no provisions in favor of slavery, unless the general one for continuing existing laws in

force, be such a one. But both have specific provisions inconsistent with slavery. Both purport to be established by "the people;" both have provisions for the writ of *habeas corpus*. Indeed, the constitutions of most of the slave states have provisions for this writ, which, as has been before shown, denies the right of property in man. That of Tennessee declares also "that all courts shall be open, and *every man*, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." Tennessee also was formerly a part of North Carolina; was set off from her while the constitution of North Carolina was a free one. Of course there has never been any legal slavery in Tennessee.

The constitutions of the states of Kentucky, Missouri, Arkansas, Mississippi, and Alabama, all have provisions about slaves; yet none of them tell us who may be slaves. Some of them indeed provide for the admission into their state of such persons as are slaves under the laws, (which of course means only the *constitutional* laws,) *of other states*. But when we go to those other states, we find that their constitutions have made no designation of the persons who may be made slaves; and therefore we are as far from finding the actual persons of the slaves as we were before.

The principal provision, in the several state constitutions, recognizing slavery, is, in substance, this, that the legislature shall have no power to *emancipate* slaves without the consent of their owners, or without making compensation. But this provision is of no avail to legalize slavery, for slavery must be *constitutionally established*, before there can be any legal slaves to be emancipated; and it cannot be established without describing the persons who may be made slaves.

Kentucky was originally a part of Virginia, and derived her slaves from Virginia. As the constitution of Virginia was always a free one, it gave no authority for slavery in that part of the state which is now Kentucky. Of course Kentucky never had any legal slavery.

Slavery was positively prohibited in all the states included in the Louisiana purchase, by the third article of the treaty of cession—which is in these words:—

Art. 3. "The *inhabitants*" (that is, *all* the inhabitants,) "of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, *according to the principles of the federal constitution*, to the enjoyment of all the rights, advantages, and immunities of *citizens* of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The cession of Florida to the United States was made on the same terms. The words of the treaty, on this point, are as follows:—

"Art. 6. The *inhabitants* of the territories, which his Catholic majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the *citizens* of the United States."

To allow *any* of the "inhabitants," included in those treaties, to be held as slaves, or denied the rights of citizenship under the United States' constitution, is a plain breach of the treaties.

The constitutions of some of the slave states have provisions like this, viz., that all laws previously in force, shall remain in force until repealed, unless repugnant to this constitution. But I think there is no instance, in which the slave acts, then on their statute books, could be perpetuated by this provision—and for two reasons; 1st. These slave acts were previously unconstitutional, and therefore were not, legally speaking, "laws in force."* 2d. Every constitution, I think, that has this provision, has one or more other provisions that *are* "repugnant" to the slave acts.

*This principle would apply, as we have before seen, where the change was from the *colonial* to a state government. It would also apply to all cases where the change took place, under the constitution of the United States, from a *territorial* to a state government. It needs no argument to prove that all our territorial statutes, that have purported to authorize slavery, were unconstitutional.

CHAPTER XIII.

THE CHILDREN OF SLAVES ARE BORN FREE.

THE idea that the children of slaves are necessarily born slaves, or that they necessarily follow that *natural law* of property, which gives the natural increase of property to the owner of the original stock, is an erroneous one.

It is a principle of natural law in regard to property, that a calf belongs to the owner of the cow that bore it; fruit to the owner of the tree or vine on which it grew; and so on. But the principle of *natural law*, which makes a calf belong to the owner of the cow, does not make the child of a slave belong to the owner of the slave—and why? Simply because both cow and calf are *naturally* subjects of property; while neither men nor children are *naturally* subjects of property. The law of nature gives no aid to any thing inconsistent with itself. It therefore gives no aid to the transmission of property in man—while it does give aid to the transmission of property in other animals and in things.

Brute animals and things being *naturally* subjects of property, there are obvious reasons why the natural increase should belong to the owner of the original stock. But men, not being *naturally* subjects of property, the law of nature will not transmit any right of property acquired in violation of her own authority. The law of nature denies all rights not derived from herself. Of course she cannot perpetuate or transmit such rights—if rights they can be called.

One important reason why a calf belongs to the owner of the cow that bore it, is, *that there is no principle of natural law that can be opposed to that ownership.* For the calf is

naturally a subject of property, and if it were not given to the owner of the cow, it would be lawful for any other person to assume the ownership. No wrong would be done to the animal by so doing. But as man is not naturally a subject of property, and as each separate individual is, on principles of natural law, entitled to the control of his own person, it is as much a wrong, and as much a violation of natural law, to make a slave of the child of a slave, as to make a slave of any other person. The natural rights of the child to the control of his own person, rise up, from the moment of his birth, in opposition to the transmission to him of any ownership, which, in violation of natural law, has been asserted to the parent.

Natural law may be overborne by arbitrary institutions; but she will never aid, or perpetuate them. For her to do so, would be to resist, and even deny her own authority. It would present the case of a principle warring against and overcoming itself. Instead of this, she asserts her own authority on the first opportunity. The moment the arbitrary law expires by its own limitation, natural law resumes her reign. If, therefore, the government declare A to be a slave, natural law may be practically overborne by this arbitrary authority; but she will not herself perpetuate it beyond the person of A—for that would be acting in contradiction to herself.—She will therefore suffer this arbitrary authority to expend itself on the person of A, according to the *letter* of the arbitrary law; but she will assert her own authority in favor of the child of A, to whom the letter of the law enslaving A, does not apply.

Slavery is a wrong to each individual enslaved; and not merely to the first of a series. Natural law, therefore, as much forbids the enslaving of the child, as if the wrong of enslaving the parent had never been perpetrated.

Slavery, then, is an arbitrary institution throughout. It depends, from first to last, upon the letter of the arbitrary law. Natural law gives it no aid, no extension, no new ap-

plication, under any circumstances whatever. Unless, therefore, the letter of the arbitrary law explicitly authorize the enslavement of the child, the child is born free, though the parent were a slave.

If the views that have already been taken of our written constitutions, be correct, no parent has ever yet been legally enslaved in this country; and of course no child. If, however, any one thinks he can place his finger upon any *constitutional* law, that has enslaved a parent, let him follow that law, and see whether it also expressly authorized the enslavement of the child. If it did not, then the child would be free.

It is no new principle that the child of a slave would be born free, but for an express law to the contrary. Some of the slave codes admit the principle—for they have special provisions that the child shall follow the condition of the mother; thus virtually admitting that, but for such a provision, the child would be free, though the mother were a slave.

Under the constitutions of the states and the United States, it requires as explicit and plenary *constitutional* authority, to make slaves of the children of slaves, as it would to make slaves of any body else. Is there, in any of the constitutions of this country, any general authority given to the governments, to make slaves of whom they please? No one will pretend it. Is there, then, any particular authority for making slaves of the children of those, who have previously been held in slavery? If there be, let the advocates of slavery point it out. If there be no such authority, all their statutes declaring that the children of slaves shall follow the condition of their mothers, are void; and those children are free by force of the law of nature.

This law of nature, that all men are born free, was recognized by this country in the Declaration of Independence.—But it was no new principle then. Justinian says, "Captivity and servitude are both contrary to the law of nature; for by that law all men are born free." But the principle was

not new with Justinian; it exists in the nature of man, and is as old as man—and the race of man generally has acknowledged it. The exceptions have been special; the rule general.

The constitution of the United States recognizes the principle that all men are born free; for it recognizes the principle that natural birth in the country gives citizenship*—which of course implies freedom. And no exception is made to the rule. Of course all born in the country since the adoption of the constitution of the United States, have been born free, whether there were, or were not any legal slaves in the country before that time.

Even the provisions, in the several state constitutions, that the legislatures shall not *emancipate* slaves, would, if allowed their full effect, unrestrained by the constitution of the United States, hold in slavery only those who were tnen slaves; it would do nothing towards enslaving their children, and would give the legislatures no authority to enslave them.

It is clear, therefore, that, on this principle alone, slavery would now be extinct in this country, unless there should be an exception of a few aged persons.

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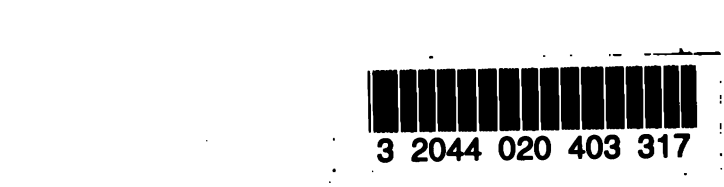
* Art. 2, Sec. 1, Clause 5, "No person, except a *natural born* citizen, * * * shall be eligible to the office of President.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